The American Political Science Review

Vol. IX FEBRUARY 1915 No. 1

LAW AND ORGANIZATION

PRESIDENTIAL ADDRESS THE ELEVENTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

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Webster, as a prelude to his reply to Hayne, asked for the reading of the resolution before the Senate, in order that the mind of his hearers might be led back to the original and perhaps forgotten subject of the debate. Today we may well imitate his example, by recurring to fundamental principles. For five months we have stood in the presence of one of the most appalling wars in history, appalling not only because of its magnitude and destructiveness but also because of its frustration of hopes widely cherished that the progress of civilization had rendered an armed conflict between the leading powers of the world morally impossible. As a result we have since the outbreak of the great conflict been tossing about on the stormy sea of controversy, distrustful of our charts and guides, and assailed on every hand with cries of doubt and despair. We have been told that there is no such thing as international law; that, even if its existence be admitted, it is at most nothing but what superior force for the time being ordains; that international understandings, even when embodied in treaties, are practically worth-

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less, being obligatory only so long as they may be conceived to subserve the interests or necessities of the moment; that the only security for the observance of international rules, general or conventional, is force, and that in force we must in the last analysis find our sole reliance.

Thoughts such as these, to which superheated minds have been known to give expression even in time of peace, are the natural product of times like those through which we are now passing. Students of law are familiar with the maxim, bequeathed to us by Cicero, that in the midst of arms the laws are silent—*inter arma silent leges*. This maxim primarily refers to municipal rather than to international law, but it may be applied to either. Its meaning and scope may easily be misconceived. It signifies in effect that, when a contest by force prevails, the ordinary rules and methods of administration become inadequate and give way to measures dictated by public necessity. The system by which the ordinary administration is superseded is called martial law. Under this system the ordinary guarantees of individual liberty are suspended; but, although this is the case, we should stray far from the truth if we were to accept in a literal or popular sense the statement that martial law is "the will of the general who commands the army." The true meaning of this phrase was expounded by the Duke of Wellington, the great commander who uttered it. The general in command, although he possessed supreme power, was, said the Duke of Wellington, "bound to lay down distinctly the rules and regulations and limits according to which his will was to be carried out." The Duke declared that he had in another country carried on martial law, and in so doing "had governed a large proportion of the population of the country by his own will." But then, he asked, what did he do? and his answer was, "he declared that the country should be governed according to its own national laws, and he carried into execution that will. He governed the country strictly by the laws of the country; and he governed it with such moderation, he must say, that political servants and judges who at first had fled or had been expelled, afterwards consented to act under his direction. The judges sat in the courts

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of law, conducting their judicial business and administering the law under his direction."[1]

It is thus evident that when, in discussing martial law, we refer to the "will" of the commanding general, we refer to regulated and not to arbitrary action, so that even in the theatre of war, where the military commander is supreme, the idea of law does not disappear.

The idea of law is in reality the very foundation of the entire theory of military occupation. The obedience which the inhabitants of the occupied territory owe to the military commander is merely an expression of this principle. While the inhabitants owe obedience, it is equally true that the military commander is on the other hand bound to render them protection, and is not permitted to treat them altogether as enemies so long as they observe the rules and regulations established for their government. Such is the principle laid down by writers on international law and by military commanders who have respected the established rules of international intercourse.

But it may be asked, what is international law? What is its essential nature; and, particularly, what is its position as compared with municipal law, and what is its sanction?

It may at the outset be admitted that a vast deal of time has been wasted in controversy over the question whether international law is law at all. These controversies, if minutely examined, will usually be found to have proceeded from one of two causes, namely, either (1) that the disputants have approached the subject from the point of view of preconceived definitions which were incapable of reconciliation, or (2) that, if they have agreed upon a definition, they have differed as to its application.

Probably no definition ever had a more pronounced effect on legal thinking than had the definition of law, given by Austin in his work on *Jurisprudence*, upon the legal mind of England and the United States. According to Austin, "a law, in the literal and proper sense of the word," is "a rule laid down for

[1] Speech of the Duke of Wellington, Debate on Affairs in Ceylon, House of Lords, April 1, 1851, Hansard, 3d series, CXV. 880.

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the guidance of an intelligent being by an intelligent being having power over him." This definition, according to its author, embraced "laws set by God to men" and "law as set by men to men." Of the latter, some were "established by political superiors acting as such," and constituted "positive law"—the appropriate matter of jurisprudence. "Closely analogous to human laws," but "improperly termed laws," were, he declared, "rules set and enforced merely by the opinion of an intermediate body of men," such as "the law of honor," or the "laws of fashion." Rules of this species constituted, he said, much of what was commonly termed "International Law;" and he placed them all in the category, not of law, but of "positive morality." Among the essentials of a law properly so called, he specified a "command" and a "sanction," the latter being the evil which would probably be incurred in case a command should be disobeyed.

Without commenting upon a terminology that smacks of the medieval, *jure divino* conception of law as the product of superior power rather than of delegated authority, a moment's reflection suffices to show that Austin's so-called definition is at most merely a description of municipal law, and even for that purpose is not sufficiently comprehensive, since it would, for instance, exclude a large part of constitutional law, much of which, like a considerable part of international law, is not enforced by courts by means of specific penalties. Nor would it be difficult to show that it is in its conceptions historically faulty. Sir Henry Maine, in his volume on *International Law*, dismisses Austin's criticisms on that system as "very interesting and quite innocuous," and rather scouts the supposition "that Austin had intended to diminish, and had succeeded in diminishing, the dignity or imperative force of international law." I am altogether unable to accept this cheerful view. I think it may easily be shown that at one time Austin's relegation of international law to the sphere of morality had a pronounced effect even upon legal decisions in England, as in the case of the *Franconia*.[2]

[2] Queen vs. Keyn (1876), 13 Cox C. C. 403; 2 Ex. Div. 63.

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Acting upon the assumption that Austin's description of municipal law was to be received as the ultimate test by which the admission of rules of conduct to the category of "law" was to be determined, writers have now and then made vain attempts to bring international law within his definition, and in order to prove that such inclusion was possible, have invoked the principle that international law is "a part of the law of the land." This principle has, as is well known, been enunciated and applied in a number of cases by the English courts, though with less precision and confidence since Austin's day than before. In the decisions of the American courts it may, I think, be said fortunately to have escaped an eclipse. But, even if we were to assume that it had nowhere been questioned, it must be admitted that the principle that the "law of nations," or international law, is a part of the law of the land, does not go to the root of the difficulty. Even though a court may accept the doctrine in good faith, its interpretation of international law may, by reason of national bias or local influence, prove to be contrary to the general sense, or, still worse, the court may be compelled by legislative direction to apply a rule flagrantly inconsistent with what is generally understood to be the accepted principle. In such a contingency, the question necessarily arises as to what is to be done to secure the application and enforcement of that principle.

It is just here that we disclose the practical difference between international law and municipal law. Speaking comprehensively, we may say that a law is an obligatory rule of action. In the course of history, men, acting in certain ways or through certain forms, have worked out and have come to accept certain rules for the government of their conduct. In a general sense all such rules may be called laws; but with a view to preserve that freedom of action which is essential to self-development, it has been deemed expedient to give to only a part of such rules the force of positive obligation. The observance of the rest of them is left to the choice of the individual, who may be deterred from disregarding them by a good disposition, or by an apprehension of self-injury or of moral censure.

To the rules lying within the sphere in which observance is

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deemed to be essential to the general welfare and is therefore admitted to be obligatory, we give the name of law. These rules we undertake by one means or another to enforce, and measures are adopted for the purpose of making their observance compulsory.

For this reason, the world has come to regard the rules governing the intercourse of nations as constituting a system of law, for the maintenance of which even the use of coercion is justified, and this system is, as students know, much older than is popularly supposed. Phillipson, in his recent work entitled *The International Law and Custom of Ancient Greece and Rome*, has given a comprehensive and systematic survey of the international practices of those great commonwealths, with a special view to demonstrate "their respective acceptance of and insistence on juridical principles, and their application of a regularized procedure and legal methods to international relationships." The popular supposition that international law, as we now know it, originated with Grotius, whose great work *De Jure Belli ac Pacis* was published in 1625, is due to the circumstances that his treatise was exceptionally clear, comprehensive and systematic, and for that reason formed a landmark in the development of the science; but if one will take the trouble, as few now do, to examine the pages of Grotius, it will be found not only that he drew his inspiration and his opinions largely from earlier times and writers, but also that some of his fundamental doctrines are now quite obsolete. Sir John Macdonell, indeed, in his introductory note to Phillipson's work, declares that the "system of international law in the ancient world" is "in some respects much more akin to that of today than international law as it was in the time of Grotius. In the number and variety of autonomous states," says Sir John; "in the many different forms of their constitutions; in the existence of autonomous democratic states; in the conception of the state itself, wholly different from the feudal or patrimonial conception; in the number and variety of dependent communities, in the existence of federations; in the unstable balance of power; in the relations of the mother countries to autonomous colonies; in the multitude of treaties

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dealing with many subjects besides peace and war; in the developed use of arbitration, as a mode of settling differences; in the practice as to passports,—in these and many other matters there is more likeness between the international law in ancient Greece and that of today than there is between the latter and international law as described in *De Jure Belli ac Pacis.*"

In the development of international law, we find that the same forces have operated and to a certain extent the same methods have prevailed as in municipal law. Till a comparatively recent day international law developed chiefly through the gradual evolution of opinion and practice; and, just as in the case of municipal law, the prevailing opinion and practice would from time to time be embodied in some notable declaration or decision, which would be received as the authoritative formulation of accepted usage. The gradual evolution of international law was exemplified with the utmost precision and force by the Supreme Court of the United States in the case of the Spanish fishing smacks, in 1900.[3] The particular point decided was that coast fishing vessels, unarmed and honestly pursuing the peaceful calling of catching and bringing in fresh fish, were exempt from capture in time of war. In opposition to this view there was cited by counsel an opinion of Lord Stowell to the effect that the exemption was "a rule of comity only, and not of legal decision." The Supreme Court, however, declared that the period of a hundred years that had elapsed since Lord Stowell's opinion was uttered was "amply sufficient to have enabled what originally may have rested in custom or comity, courtesy or concession, to grow, by the general assent of civilized nations, into a settled rule of international law."

But, just as, in the case of municipal law, the statutory element has increased at the expense of the customary, so, in international law, there has been an increasing tendency to introduce modifications and improvements by acts in their nature legislative. A great advance towards assuring the free nagivation of international streams of water was made by the Vienna Congress Treaty of

[3] *The Paquete Habana* (1900), 175 U. S. 677.

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June 9, 1815, by which the contracting parties agreed that rivers which separated or traversed two or more states should, along their whole navigable course, be, in respect of commerce, entirely free to everyone, subject only to regulations of police. This principle, although applied primarily to the Rhine, was expressly extended to the Neckar, the Mayne, the Moselle, the Meuse, and the Scheldt. With a limitation of the right of free navigation in some instances to the citizens or subjects of the riparian powers, similar stipulations may be found in treaties relating to the rivers and canals of the ancient kingdom of Poland; to the Elbe, Po, Pruth, Douro, Danube, and other rivers in Europe; and to the rivers Amazon, Paraguay, Uruguay, St. Lawrence, Yukon, Porcupine, and Stikine, in America.

By the same Congress, an important contribution to international law was made in the form of rules to regulate the rank and precedence of diplomatic agents. These rules, slightly modified by the Congress of Aix-la-Chapelle of 1818, were accepted by all the powers which then composed the international circle, and resulted in the regulation of a subject which had constantly given rise to disputes.

Yet more remarkable as an act of legislative aspect was the Declaration on Maritime Law, made by the Congress of Paris of 1856. This Declaration embraced four rules:

"1. Privateering is and remains abolished.

"2. A neutral flag covers an enemy's goods, with the exception of contrabrand of war.

"3. Neutral goods, with the exception of contraband of war, are not liable to capture under the enemy's flag.

"4. Blockades, in order to be binding, must be effective, that is to say, maintained by a force sufficient really to prevent access to the coast of the enemy."

The fourth rule may be considered as merely declaratory of international law, and so also may the third rule. But by the first two rules it was proposed to give the character and force of law to principles which had previously been obligatory only when they were made so by treaty; and to this end the signatories announced their purpose to invite the adhesion of other powers

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with a view "to establish a uniform rule." The powers invited to adhere embraced practically all those within the sphere of international law; and, with the exception of the United States, Spain and Mexico, they accepted the Declaration in its entirety. Spain gave her adhesion several years ago, but the United States has not as yet done so. Their original objection to adhering was based upon the naked inhibition of privateering, an objection which would have lost much of its force if it had been foreseen that merchant vessels might be incorporated into the navy without violating either the letter or the spirit of the declaration. All the powers, however, approved the second rule, that free ships make free goods, and it has since been regarded as a principle of international law. It was expressly so proclaimed both by the United States and by Spain at the outbreak of the war between them in 1898.

Since 1860 numerous attempts have been made, by means of international conferences, to legislate on the modes of conducting warfare. The Geneva Convention of August 22, 1864, for the amelioration of the condition of the wounded in armies in the field, commonly called the Red Cross convention, is known to all. The observance of the provisions of this convention is considered a test of civilization. Agreements such as the Declaration of St. Petersburg of 1868, which was framed by an international military commission, have been made as to the nature of the weapons that may be used in war, and as to the treatment of prisoners of war. Nor should we omit to mention the project of Declaration concerning the Laws of War on Land, formulated by the Brussels Conference of 1874. Although the powers represented in the conference afterwards failed to make the declaration binding, it forms the basis of the "Manual" of the Institute of International Law of 1880, of the plan adopted by the Spanish-Portuguese-Latin-American Military Congress at Madrid in 1892, and also of the Hague Convention relating to the Laws and Usages of War on Land. Unfortunately, it cannot be said that the Hague conventions relating to the conduct of war on land and sea have, as to the conflict now in progress in Europe, the force of international compacts. Each of

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the conventions contains a clause to the effect that its provisions "do not apply except between contracting parties, and then only if all the belligerents are parties to the conventions." Servia, one of the belligerents in the pending war, has not ratified any of the conventions; and yet other belligerents have not ratified some of them. The rules they lay down are therefore binding upon the belligerents only so far as they are declaratory of existing international law.

But, let us assume that international rules of conduct, founded either on usage or on treaties, are disregarded. What then is to be done? It is just here, as I have intimated, that we find the practical difference between international law and municipal law, and this difference relates to organization.

Before proceeding to discuss the subject of organization, I desire to comment upon certain impressions, which I conceive to be erroneous, in regard to international law and its observance. It is often hastily assumed (1) that the rules of international law are, as contrasted with the rules of municipal law, exceedingly indeterminate, and (2) that, even when they are ascertainable, they are little heeded. Both these assumptions are for the most part unfounded. The fact cannot be denied that there exists in the sphere of international law a considerable amount of uncertainty as to what the law actually is; but, that such uncertainty is not unknown in the domain of municipal law is amply demonstrated by the ever accelerating accumulation of judicial decisions and the diverse, discordant, conflicting views which they so often exhibit. Even our legislative enactments do not uniformly afford relief. It took, for instance, nearly twenty years, with the aid of our judicial authorities, to ascertain the meaning of the so-called Sherman Law, and when the Supreme Court at length applied to it "the rule of reason," there were those who felt so much or so little regard for the wisdom of Congress as to assert that the effect of the statute had been misinterpreted. And even yet its bearing upon some of our most important companies remains to be determined.

At the present moment there are important forms of contract, of almost world-wide use, the sense of whose eventual interpretation

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by the courts on capital points is a matter of pure conjecture, not because of any difficulty as to facts or even as to the application of principles to facts, but because of absolute uncertainty as to the rules of municipal law. How can one predict what the decision of a common law court will be on a point of law not before precisely determined, when the court may "on full consideration" overturn a previously established rule, as happened, for instance, when it was held that insurance on enemy property was illegal and void?

In respect of actual observance, I venture to say that international law is on the whole as well observed as municipal law. Perhaps one would not go too far in saying that it is better observed, at any rate in time of peace. In time of war, when a contest by force exists, it is needless to repeat that the application of law, whether municipal or international, becomes more or less uncertain, and that, as turmoil and excitement grow, the uncertainty increases. In time of peace, however, the regard which nations are accustomed to feel for their reputation and dignity strongly influences them, perhaps quite as much as does the dread of retaliation, to respect the rules by which their intercourse is confessedly regulated. If one would only reflect upon the smallness of the number of international claims that arise in times of internal and external peace, he would not be disposed to question the correctness of this statement. It is in seasons of disturbance, domestic or international, that complaints and claims spring up.

Assuming, however, that international law has been disregarded, where is a remedy to be sought? If muncipal law is violated, we apply to the administrative officials, or to the courts, as a means of securing redress. We appeal, in other words, to constituted authorities, who are empowered to do justice; and, if law is lacking, we may go to the legislature to supply the defect, at least for the future. In other words, we have within the state an organization for the enforcement of justice according to law.

In the international sphere, under similar conditions, we proceed in the first instance amicably, through diplomatic officials, who are the constituted authorities for this purpose. We negotiate

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and in case an agreement should not be reached, we may accept the good offices or the mediation of a third power; or we may submit the question to judicial settlement, by means of arbitration. These are all amicable modes of redress, which international organization in its present state provides. If they do not succeed, it is laid down that we may try inamicable methods, ranging all the way from retorsion or retaliation, embargo, commercial non-intercourse, severance of diplomatic relations, and display of force, to reprisals, which are acts of war, and to war itself, which is in its physical aspect merely general reprisals. Nevertheless, if actual force be employed, there is always the danger of forcible resistance, ending in war; and in that event we may have the incongruous result that the aggressor, without submitting to the examination of any tribunal the justice of his cause, may, in the exercise of the "rights of war," conquer or destroy the injured power which he has by his own wrong driven to become his adversary.

This principle, which I conceive to be the capital defect of international law at the present day, is perhaps to be explained as a survival of the superstitions that preserved in municipal law for so many centuries the process of trial by battle. However this may be, it is flagrantly at variance with all conceptions of human right, and can be effectually got rid of only through further organization. It is in this respect, as I have intimated, that international law differs from municipal law—not in its essence or its obligation, but in the method of its declaration and administration. Within the state we have an organization for the making, declaration and enforcement of law, whereas, as between nations, we are obliged to a great extent to rely upon their voluntary concurrence or coöperation. In other words, we lack in the international sphere that organization which gives to the administration of law within the state a certain security. This defect it is the business of nations to supply by forming among themselves an appropriate organization.

The essential features of such an organization would be somewhat as follows:

1. It would set law above violence: (1) By providing suitable

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and efficacious means and agencies for the enforcement of law; and (2) by making the use of force illegal, except (a) in support of a duly ascertained legal right, or (b) in self-defense.

The first effect of such an organization would be to give an additional sanction to the principle of the equality of independent states before the law. "No principle of general law," said Chief Justice Marshall, "is more universally acknowledged than the perfect equality of nations. Russia and Geneva have equal rights."[4] "Power or weakness," said the great Swiss publicist, Vattel, "does not in this respect produce any difference." And, incidentally, in proportion as this principle was maintained, the monstrous supposition that power is the measure of right would tend to disappear, and the claims of predatory conquest would become less and less capable of realization.

2. It would provide a more efficient means than now exists for the making and declaration of law.

We have adverted to the development of international law through the gradual evolution of opinion and practice, and also to attempts made during the past hundred years to establish rules by acts in their nature legislative. The chief obstacle to the efficacy of the second method is the requirement of unanimity. In the declaration of law on the strength of usage, it has never been supposed to be necessary to show that each particular nation had affirmatively adopted it. It appearing that the usage is general, all nations that profess to be law-governed are assumed at least tacitly to have accepted it. But, when we come to legislation, each nation must, it is held, give its assent, in order that it may be bound. Undoubtedly it would be going too far in the present state of things to propose a mere majority rule. But it is altogether desirable that a rule should be adopted whereby it may no longer be possible for a single state to stand in the way of international legislation. The adoption of such a rule could not be regarded as impairing in a proper sense the principle of the equality of nations. Nations have responsibilities as well as rights.

[4] The Antelope, 10 Wheaton, 66, 122.

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3. It would provide more fully than has heretofore been done for the investigation and determination of disputes by means of tribunals, possessing advisory or judicial powers, as the case might be.

The neglect of such processes has been the great defect of the European Concert. I am not among the number of those who hold towards that organization an attitude wholly accusatory. Its efforts have no doubt in the main been sincerely directed to the preservation of peace. But, its proceedings would often have been less open to suspicion and would have tended to produce more lasting results, if considerations of fact and of law had played a larger part in its deliberations.

Such I conceive to be the essentials of an organization which would place international law on substantially the same footing as municipal law, as regards its making, declaration and enforcement. But, the fact is not to be lost sight of that, in the present state of human development, there is no absolute security for the uninterrupted maintenance of law, national or international, or for the continuous preservation of peace. We are often told that in the last analysis the ultimate sanction of law is "public opinion," by which is meant, we may assume, not so much the intelligent conclusions reached by processes of reasoning, as the general state of mind which, frequently dominated by sentiment, determines the attitude of a people or of the world. Logically speaking, whether the popular attitude be dictated by reason or by sentiment, forcible opposition to law has no excuse where universal suffrage practically prevails, as it does in the United States. In so saying, I of course do not intend to enter upon the discussion of the vexed question of woman suffrage, which I may follow high authority in leaving to the determination of the several States. Eliminating this, however, as a cause of war, I repeat that, if the predominant opinion should always rightfully prevail, then, where ballots have been substituted for bayonets forcible opposition to law and its administration would seem to be without justification. Nevertheless, we know that, in respect of civil strife, the United States has not escaped the misfortunes to which other nations, in which the suffrage was less extended,

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have now and then been subject. This fact may be ascribed (1) to the circumstance that there is a large part of human activities, especially of a competitive kind, not yet brought within the sphere of legal regulation and (2) to the propensity of men acting in the mass to attain their ends by violence. This tendency no doubt should diminish in proportion as the suffrage is made free. In the United States, with its immense extent of territory and its great population, we have before us the spectacle of long-continued internal peace with a standing military force that would scarcely form the nucleus of an army sufficient for any considerable emergency. Nevertheless, it would be rash to assume that we are permanently immune from the danger of domestic strife. Without going into a discussion of the causes, we have lately witnessed in one of our States a condition of things resembling war, while at the same time an armed conflict was threatened in a part of the British dominions, in which civil war had come to be regarded as almost unthinkable.

Occasional conditions such as these should by no means lessen our estimate of the importance of organization for the maintenance of law, either international or internal. They should, on the contrary, serve to emphasize not only the necessity of organization, but also the importance of extending its scope and increasing its efficiency. Meanwhile, they also indicate the futility of relying upon any single device, such as a court, as an all-sufficient means of preserving peace and order. Experience has demonstrated that, even within comparatively small areas, local conditions must be consulted, in order that the administration of law may not produce discomfort and discontent; and, as long as discontent and ambition continue to play in the affairs of the world a conspicuous part, so long will it be necessary to be prepared either to satisfy or to resist them.

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THE CAUSES OF THE GREAT WAR

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In 1806 Prussia engaged in war with Napoleon. The swiftest of his triumphs followed. In two months the Prussians had surrendered their fortresses, and seen annihilated the greatness which Europe had failed to crush in the time of Frederick the Great. A period of humiliation followed, and for some years the people lived under the conqueror's yoke.

Deliverance came when Napoleon, stretching too far his power, and arousing the spirit of peoples, was defeated by Europe in arms. The liberation which alone Prussia could not have accomplished, was yet wrought partly by herself, for deliverance was preceded by regeneration in which her military system was fundamentally reformed. But it may be that what remained after all as the principal heritage from these years was the abiding sense that Prussia had suffered from being weak, and that only through military strength could there be safety in the future.

The expansion and greatness of Prussia left unfulfilled the old idea of a united Germany. Through the middle ages and down to this time Germany had remained disunited, and weak and despised because of it. The smallest states had now disappeared, but still there were larger ones, grouped under Austria in vague and shadowy empire. And the history of Germany in the half century which followed the downfall of Napoleon is a record of yearning and striving on the part of people filled with distant memories, and noble aspiration after that strength and union which had come to their neighbors and yet been denied to themselves.

Gradually it was seen that Austria would not or could not do the work, and presently that Prussia could do it. What fol-

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lowed has often been told: Denmark was despoiled, Austria defeated, and then a great confederation formed, and finally the old enemy France struck down, her eastern provinces rent away, and in the midst of mighty fervor a real German Empire founded. So splendid was this work of Bismarck that had his methods been different he might have stood as the greatest man of his century.

This era is important not only for what it ended and began, but also for the methods used in it. Bismarck was not worse than most of the diplomats who preceded or followed him, but the immensity of his achievement and the splendor of his success have cast into bold relief the evil and the good that was in him. Frequently his instruments were cunning, force, and fraud. With him means were justified by end. A great task was to be achieved, as he could, so long as it was achieved. Ordinary justice and moral considerations had with him, as with Napoleon, small place. There was pity for the weak and mercy to the fallen only as such things were politic. He left behind him a wondrous glamour, but he left also fear and hatred and desire for revenge. And as by force and violence he had accomplished what he had done, so he knew that only by force could his work be maintained.

Bismarck had isolated his enemies and then struck them down. From Austria he had taken little, and so he was able to create friendship based on identity of interests, but from France he had taken much, and France must remain lonely and weak, powerless to take vengeance and undo what Germans had achieved. In this he was largely successful. Before France had recovered from her wounds, Austria, Germany and Russia had drawn together. Italy was poor, and with her own unity just obtained; England remained as before in splendid isolation.

In France the years after 1871 are the saddest since the Hundred Years War, but they are at the same time of imperishable glory. The eastern frontier was now so near to Paris as to make it seem indefensible. Crushed by an enormous indemnity and also by the sense of irreparable disaster, it seemed that France had fallen on days too evil for cure. But with immortal spirit

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her people at once began the task of regeneration. In a few years the frontier was re-fortified, and the new military system copied from the enemy made her seem more formidable than ever; though this strength was somewhat counterbalanced by the weakness inseparable from the beginnings of democratic government.

So strong did France become and so surprising was her recovery that Germany became alarmed, and seriously considered striking her down before preparations had gone further, and so completely that she could never be dangerous again. This was not done, but France remained filled with burning desire for revenge and hope of winning back some day the provinces which she had lost. It seemed, however, that the opportunity was destined never to come. At first she was not merely weak but alone. Afterwards when the balance of power had been redressed a different spirit had come at the same time that changes of birth-rate had produced such disparity of numbers as to make an attack by France upon Germany unthinkable.

The appearance of the German Empire was a rude disturbance of the old political equilibrium in Europe. Bismarck sought readjustment by a new grouping of nations about Germany. Austria, who soon came to be dependent upon German support, was firmly attached in alliance. To these two powers Russia had been drawn for a while, but it was soon apparent that the question of the Balkans made the interests of Germany's partners irreconcilable. During the Russo-Turkish War she was forced to choose which of her friends she would in the future have, and the support which she gave to Austria made it certain that Russia would soon seek her interests elsewhere.

Gradually in eastern Europe developed a situation like that to the west of the Rhine. On the one side was Russia smarting under indignity from the Teutonic powers; on the other France alone and unrevenged. Memory of old antagonisms kept these two powers apart, but in time common interest proved stronger, and after 1891 the world knew that there was a Dual Alliance. Meanwhile the astute Bismarck seized upon old suspicion and colonial rivalry, played upon Italy's fear of France,

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and brought her into a Triple Alliance with Austria and the German Empire. Down to the end of the century and apparently for a few years after, the peace of Europe was maintained, as men believed, by the two armed camps of the Dual Alliance and the Triple Alliance, constantly increasing their armaments and debts, and keeping against each other vigilant watch and ward. On the outskirts of Europe remained England, safe, as it seemed, and aloof.

The first decade of the new century saw immense alteration. Friendships cooled, enemies became friends, and newcomers entered the opposing camps. Of this there were many causes, but most of them may be traced ultimately to the prodigious growth of the German Empire, which is the most striking phenomenon of Europe in recent times.

A nation which was mainly agricultural in 1870 had by 1910 come to be second only to the United States in manufactures and second only to England in shipping. So fast had national riches increased that it was now the wealthiest nation in Europe, having in two generations outstripped both England and France. It was filled with exuberant strength and aggressive energy. The basis of this was method and organization and efficiency, but it was also the increasing population of the empire. In all the changes of this time no single factor was more important.

In 1801 the population of Great Britain was 10,500,000, that of France 27,000,000; in 1911 they had respectively 45,000,000 and barely 40,000,000. In 1816 the territories of the present German Empire contained 24,000,000, but in 1911 this had risen to 66,000,000. In England population had increased rapidly; in France for a long time it had remained stationary; in Germany it had grown amazingly, and was now enlarging by a million souls a year. During the later centuries of the Roman Empire, and all over the world among civilized peoples in the nineteenth century, birth-rate had shown a tendency to fall as material comfort and standard of living were raised. It was the case in the Scandinavian countries, and to some extent in England and the United States; but in France, where conditions tended toward widest diffusion of proprietorship and wealth, this con-

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dition had become universal, and after the loss of Alsace and Lorraine, France was left with a smaller population than before. On the other hand there were such countries as Italy and Russia, with relatively low standard of living, and fecundity excessively great; but there was also Germany with expanding industry and increasing wealth, where the birth-rate was tremendously high, and for a long time showed scant prospect of diminution. Thus it was that German statisticians could gloat over their old enemy, and look forward to the day when there would be in Germany twice as many people as in France, and as many as in England and France together.

Here was an old problem which had loomed up in bygone times and been lost in the changes of the past: whether a nation which increases rapidly the number of its people in lands already well filled, does so because of strength and joyous youth, vigor and creative power, and so strides onward to happiness and higher achievement, or whether it represents a lower civilization which in the past has brought strife and destruction; and whether a nation which increases little or merely maintains its numbers, even though it maintains them in intelligence and material happiness, is a tired nation with halting step upon the way of degeneracy and death, or whether it has attained a higher civilization to which the world will advance in the future.

But Germany, like a giant conscious of greatness waxed ever more ambitious and aggressive, and the pressure of numbers, first felt within her own bounds, was soon felt by all her neighbors, and at last by every nation in the world. For where intelligence and efficiency are nearly equal, numbers will usually be decisive. It was the greatness of her population which so long gave to France the leadership of Europe; and now behind admirable organization and thoroughness of method, it was increase of people which gave the German Empire impregnable position across the continent, and let its rulers dream of the hegemony of the world.

In France, where terrible memories lingered, the sense of inferiority became stronger and stronger. The rapid progress of the antagonist made impossible putting in the field so many

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fighting men that there could be an attack upon Germany, and the utmost that patriotic Frenchmen could hope for in another day of wrath was the saving of their country by defensive warfare. Sometimes even this seemed hopeless without assistance. Accordingly, when Russia turned aside from Europe to seek adventure in Manchuria, and when her strength, though not destroyed, for a time disappeared in the west, France perceiving that the balance of power was altered again, sought the friendship of England, and England was glad now to give it.

The relations of England and Germany attracted little attention until the beginning of the twentieth century, when the wonderful progress of Germany, the industrial competition which resulted, and the immense power which she was gaining, caused increasing disquietude among British leaders. At this time, also, hostility during the Boer War became more ominous when Germany, avowing that her future lay upon the sea, began a naval program greater than any nation had ever undertaken. The construction of warships was carried swiftly forward, and for a time seemed to threaten British superiority on the sea, and, as many thought, the existence of their empire. Thus was brought about a situation fraught with peril for the future. England came to believe that she must seek powerful friends to stand with her, and so began making friendships and settling old disputes. Germany hastened and increased her efforts. Suspicion and recrimination followed, and the probability of conflict was openly discussed. Therefore, England having entered into friendly relations with Italy and America, sought the friendship of France, and became presently less suspicious of Russia. Then a mighty change became apparent: England who had so long stood apart, finding her interests outside of European entanglements was presently the center and indeed the inspiration of a vast combination opposed to Germany. The avowed object was defence; but Germans refused to believe that this coalition did not threaten their safety, and they saw in the activity of England a monstrous attempt to isolate their empire, surround it with enemies, and deprive it of chance to expand and seek out its "place in the sun."

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In 1904 an agreement ended all disputes between England and France, each nation making promises and concessions. This Entente Cordiale was possible because memories of bitterness were dying out; but it was owing principally to the dread which both nations had of the Germans. And a change as significant soon followed in the relations between England and Russia. The fact that Russia, defeated in Asia, now seemed less menacing there, and that she was the ally of friendly France, combined with growing fear of German plans to secure an understanding between Petrograd and London. Hence, in the first ten years of the century there came to be not only the alliance between Russia and France, but also the friendly understanding between France and England, and then the understanding between Russia and England. And as interest and ambition made this threefold connection stronger, the whole group was referred to as the Triple Entente, and by 1912 represented the armed camp confronting the Triple Alliance.

The recent history of Europe is the history of the opposition of these two groups. The purpose of each was to maintain the existing situation, though probably on both sides there were leaders who aimed at the mastery of Europe. In resources and in actual power the opponents were not unevenly matched. In territory, in number of men, and in financial resources, the powers of the Entente were indisputably superior; but with the Triple Alliance there were advantages of cohesiveness, organization, and position which seemed to redress the balance; while the tradition of German military supremacy still held powerful sway.

England had immense resources in money, and she held within her empire a fourth of the territory and a fourth of the population of the world. But the bonds which united the parts were loosely drawn. The problem of framing some scheme of federation to present a strong and united front to enemies seemed hopeless to most Englishmen, while enemies believed that the first touch of disaster would see the empire crumble into fragments. And if it were doubtful whether the outlying parts could give effective assistance, it was certain that England herself, lacking as she

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did a huge army like those possessed by her neighbors, would in case of a sudden blow be nearly impotent upon land. She must have the great wars fought upon the continent. She must support France against Germany, as once she had supported her against Spain, and later had supported Germany against France. Ultimately her salvation must lie in mastery of the sea. Here German competition was felt more severely each year, but as England had become alarmed in time and made prodigious efforts, her predominance was still unquestioned.

The strength of Russia was uncertain. So far did she lie across the world, and so vast was the number of her men, that there was in her bulk and immensity something horrible. About the end of the nineteenth century the Muscovite millions seemed a menace to the remainder of the world. But this legend had been shattered by the events of the Russo-Japanese War, which revealed inferior military and naval organization, corruption and incapacity in the government, and ignorance and discontent among the masses. After 1905 Russia was for some time of little weight in Europe. She was, indeed, recovering, but her enemies boasted that when she had recovered, she would be unwieldly and incapable as she had been in the far east.

In many respects France was more feared than England or Russia. From the awful disasters of 1870 she had recovered completely. In respect of ready money France was now the nation best prepared to fight. The frontier had been fortified impregnably, and the ardor of Frenchmen had built up an army which might be inferior to the German, but which the Germans themselves held in high respect. France they believed their enemy most dangerous and immediate, and the plans of their general staff always contemplated the first stroke to the west, and the crushing of France before her allies could render assistance. It was always doubtful whether France could hold her own: it was not certain that the temperament and genius of the people permitted the painstaking organization which the example of Germany made necessary, nor was it probable that a republican government allowed of the rapid disposition and iron control which must be expected in Berlin; while stationary popu-

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lation face to face with enormous increase in Germany made a conflict more hopeless every year. "I hold France in the hollow of my hand," the emperor is said once to have declared.

There were, then, in this group France powerful and efficient, but smaller and weaker than Germany; Russia vast and incalculable, but of doubtful quality; England wealthy and all-powerful at sea, but untried in a war of armed nations. In a great conflict, moreover, these peoples must operate upon exterior lines, while it was not certain that all of them would act together. Always the bond of their union was thought of German aggression.

In the camp of the Triple Alliance there were elements of weakness still more pronounced. Formally the union was stronger than that of their rivals, but actually this was known not to be so; for the power of one of the partners was doubtful, and the action of another uncertain.

As to the strength of Germany there was never any doubt. Those who passed down the Rhine or went to Berlin saw everywhere colossal power. In the rising cities, the mounting numbers, and the vast material creations of this country there was a sheer vitality which one saw not so much in England and little in France. And in Germany the very purpose of the civilization seemed different. The army was the most powerful in the world; nowhere did numbers and equipment go so far to make a nation invincible; and no army could be so quickly assembled and hurled upon its enemy with such awful speed and precision. The navy, a newer creation, had grown monstrously and was now feared by every nation nearby. As an inheritance from the great war German soldiers believed that their army was unconquerable. Finally, the power of a great and intelligent people was wielded by a government autocratic in spirit, in character capable and efficient.

The closest alliance in Europe was that which bound Germany and Austria-Hungary. Whatever happened, it was nearly certain that Austria could count upon Germany, and in turn would follow her lead. But probably the alliance was stronger than the ally. About the Dual Monarchy there was something so artificial and conglomerate that apparently it was held together by

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pressure from without, though some found the chief bond in the person of its aged ruler, after whose death the fragments must fall asunder. It was an unwieldy mass of many races and creeds. The peoples had never been fused into one nation, but lived under a government medieval and reactionary in spirit, which controlled by keeping them apart. The strength of the government resulted from an agreement by which a German minority in the north and a Hungarian minority in the south held in subjection all others; but even between these two quarrels were violent and bitter. In the Hapsburg monarchy was little of the strength which comes from the spirit and enthusiasm of national feeling, while in military and material things it was lacking and effete.

As to Italy, her progress had been one of the most hopeful signs in the recent development of Europe. Among the people much misery existed, and undoubtedly the country was poor, but population was increasing rapidly, and along with it prosperity and wealth. An army and a navy had been built up beyond the resources of the people, but they made Italy a strong ally and important in high politics. She might, then, be of much assistance to the powers of central Europe, but it gradually came to be seen that she was an unwilling member of the alliance. Into this alliance she had come through fear and anger at France, but the causes of fear had long been removed, and of France she was now a good friend. On the other hand, Austria, the old enemy and oppressor, still held unwilling Italians within her domain, while in the Balkans and in the Adriatic the rivalry of Austria and Italy became steadily more intense. In 1911 Italy attacked possessions of Turkey, the friend of the Germanic powers, and when as a result of the war she was left with spoil of Tripoli, the rift between herself and her allies widened, since her new province could be held no longer than she remained at peace with the Triple Entente. Though it might be good policy not to withdraw from the Triple Alliance in ordinary times, it was not certain that Italy could be brought to fight against France, and doubtful whether she would not one day give Austria defiance.

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Thus it may be seen that the union of some of the partners was uncertain. Austria and Germany acted as one, but Italy stood with them as a result of conditions which no longer prevailed. In the opposing camp England and France were now true friends, and would most probably support each other, while Russia and France were bound by definite alliance and perhaps by common interest, but between Russia and England there were differences which had long obtained and were now suppressed only because of common fears. The ties, then, which bound some of the nations were artificial and repugnant, and might well dissolve as conditions changed; but there were also forces of such antipathy and such immeasurable depth that they could not easily be disposed of, and would hardly be removed without conflict. They were Pan-Germanism against Pan-Slavism, and the rivalry of Germany and England.

The ideas which underlie the first of these forces are so vast, indefinite, and comprehensive that it is difficult to understand and define them, nor is it certain that even their champions have reduced them to clearness and precision. By Pan-Slavism may be understood the idea of uniting in one great power all the Slavic peoples, who together would seek out their destiny; but less directly it means the increase of Russia and her expansion toward Constantinople and the Adriatic, and lordship over the races of the earth. Pan-Germanism is a vaguer thing. In the beginning it meant the union of all Germans in Europe, and perhaps of the Germans scattered in lands beyond, but in later years it has come in some sense to mean the rising ambition of Germany and Austria to obtain the mastery of the sea and the hegemony of Europe, and by building up a great empire from the Baltic Sea to the Persian Gulf, win for themselves the mastery of the world. Between these two ideals there might be truce, but there never could be compromise, for the realization of the one meant always the destruction of the other. Success would probably come to whichever power controlled the Balkan peninsula. When Russian battalions guarded the Bosporus and Aegean waters, then at last would Russia have her window upon the world; but on that day at Constantinople would Russia

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control all Danube trade, her finger would be upon the artery of Austria, and on that day must come to an end the dream of the Germanic powers to stretch their dominion down to Babylon. And, on the other hand, if ever Germany through Austria won the Bosporus and the Hellespont, then would Russia, thrust back upon the north and south and east, lie like a giant bound among its enemies, a vast but an interior and a secondary power. In the Balkans, therefore, was the danger-spot of Europe. The destinies of polite and wealthy nations were here in the keeping of plotters and peasants and mountaineers.

More imminent, as some believed, though less necessary, was conflict between Germany and England. There was a group of Prussian historians who taught that the interests of the two were irreconcilable. In the past Germany had given herself over to religion, philosophy and idealism which became the common heritage of mankind, while England, sheltered by ocean and favored by currents and wind, had stood like a robber baron by the road of the commerce of the world, and from the toll which she levied there had grown wealthy and great. When her neighbors fought, she stood craftily aside, pitting one against the other, and winning greatest profit in the end. By chance, by accident, by the favor of the gods, not by merit, England now held a vast empire and commerce; but this empire was decrepit and rotten with prosperity and decay. Now at last when the German people had forged their unity and strength into a mighty weapon and begun their quest for the greater empire which their greatness predestined, everywhere the world was preëmpted, everywhere it was portioned among English people or their allies, while England held at her mercy the trade of Germany as once she had held the commerce of Holland; and whenever Germans sought to expand and win their way, always England plotted and thwarted and held them back. Evil as this was, it was intolerable that a vigorous, youthful nation should suffer so at the hands of one aged and tired. But there would come a day when the German fleet, mightier every year, could strike with fatal effect, when German battalions could march into London, and divide up a wondrous spoil. Then would the future of Germany

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begin, for then she would hold the mastery of Europe, the commerce of the world, and the islands of the sea which had been England's. Even the Muscovite might then be bought off, or thrust aside into India, or given Constantinople, so that Germany and Russia between them might rule the world.

It is not impossible that the ruling caste, efficient yet reactionary, confronted by the rising tide of democracy strong in Germany but politically more fettered than in other free countries of the west, that this ruling caste sought to postpone the decline of its system by entrancing the people with projects of imperial splendor and world dominion, which by the logic of fate must be at the expense of Great Britain's empire. How many of the German people believed these things one may not say, perhaps an increasing number; but certainly there were Germans who proclaimed them, and in England produced uneasiness, alarm, and then panic. Men remembered how Denmark and Austria had been struck down and France lured to her ruin, and bethought them how in darkening days of the past their ancestors had fought against Philip and Louis the Grand. Was their heritage now at stake in new peril? Therefore England's jealousy and envy were all tinged with fear. Expansion, the winning of colonies, creating a great fleet, to Germany seemed glorious and proper ambition and mere doing what England had once done herself, but in all such efforts England saw threat and aggression. So British warships were multiplied, and ceaselessly from Whitehall a net was woven about Germany to hold her back and bind her in.

For nine years the powers who divided the greatness of Europe faced each other in armed and portentous peace. Four times was the flood near to bursting its wall. In 1905, France with the sanction of England made ready to acquire Morocco, but Germany, defying both antagonists, forced the abandonment of this design. Three years after, Austria, violating the Treaty of Berlin, incorporated Bosnia and Herzegovina within her dominion, when the wrath of Russia was quenched by the warlike demeanor of Germany, who appeared beside her ally in "shining armor." Both of these triumphs were secured before Russia had recovered

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from her defeat by Japan. But as the balance of power was once more restored, the opposing group was more resolute. In 1911 France entered again upon her quest in Morocco. In the crisis which followed Europe was brought to the verge of war, but in the end Germany yielded, Morocco fell to France, and the Entente secured a great triumph. Next year the Balkan War made a situation equally grave. The army of Austria was mobilized, and a vast body of Russians gathered behind the girdle of Polish fortresses. But once more the statesmen of Europe averted the great war, and this crisis like the others passed away.

The outcome of the Balkan War made it nearly certain that this could not be done again, for the results of the war involved a change in the great game which the rival powers were playing. Down to 1913 Germany and Austria had gained advantages in the Balkans and reduced the prestige of Russia. Rumania was almost an appendage of the Triple Alliance, Turkey was coming to be considered so, and the other countries were weak, hemmed in by hostile neighbors, or distracted with local quarrels. It might seem that while Germany held Russia in check, Austria would march in triumph to Salonika. But the events of 1912 and 1913 produced a revolution. Servia, Montenegro, Bulgaria, and Greece, combining suddenly, fell upon Turkey and overwhelmed her in rapid and decisive campaigns, and when Austria, appalled by the sudden turn of events would have intervened to stay their progress, the opposition of Russia prevented her taking any action. The final result was the appearance of a group of powerful Balkan States who looked rather to Russia than central Europe.

The immediate consequences were far-reaching and profound. The Triple Alliance now became weaker at the same time that it was called upon to face more numerous enemies. Through the efforts of Austria an independent Adriatic state, Albania, had been constituted from the relics of the Turkish domain. Here Italy and Austria began striving for predominance with increasing ill-will and suspicion. Austria, long bounded on the south by friendly Rumania, indifferent Bulgaria, and by Servia hostile but helpless, now found these nations so much stronger and

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so little friendly that she must thereafter keep no small part of her military forces to guard her frontier against them. This meant that she could now marshal fewer soldiers against Russia, and it meant that Austria and Germany were relatively weaker than before.

Now this alteration occurred at a time when the star of the Triple Alliance was no longer ascendant as it had been after 1904. The fact that Germany had suffered disaster in the controversy over Morocco was certain indication that England and France had gained much confidence and strength, while Russia, forgetting her evil fortune in the east, had applied herself so diligently to the task of recuperation, that it was no longer possible to neglect her or put her to shame.

There was much alarm in Germany in 1913. The shadow of Russia seemed cast across the empire, and fear and darkness prevailed in many quarters. The old revenge of France might be more dreaded now, and one cartoon showed Delcassé riding the Russian elephant toward Berlin. So, the German authorities who had long used the enmity of England to forward naval expansion, played now upon fear of Russia and obtained a huge increase of the army, raising it to 800,000 men. This they asserted was a purely defensive thing, designed to redress the balance upset by events in the Balkans; but to France it seemed ominous of coming attack, and she made a last effort to offset the preponderance of her neighbor. By extending military service from two to three years, she did obtain a considerable increase in her army of the first line, but it was realized that this was literally the last card which she could play in the gamble of fortune. At the same time Russia made great enlargement of her standing army, and throughout Europe naval expansion went on apace.

Melancholy days had come. The great nations, assembled in two groups, confronted each other always expecting war and always armed for the fray. In their train the smaller ones were gathering. Vast armaments, involving, as they did, perpetual anxiety and heavy taxation, might for a long while maintain equilibrium, but one day they would probably lead to conflict.

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So great was the burden that some even hoped for the speedy coming of war to remove what could no longer be borne. But the most peaceful dared not disarm for fear of annihilation. At the beginning of 1914 probably some knew that the storm so much dreaded and so long postponed was about to burst at last.

The events which led immediately to the catastrophe of the summer are only known in part, nor can they be learned completely until some generations have passed; but certain elements of the situation and certain fundamental factors are understood now, perhaps, as well as they can be when the archives have yielded up their secrets.

Certainly there was the rivalry of Germany and England, resulting from the power and ambition of Germany, and the dread and jealousy of England. In Germany there was irritation at the unceasing hostility of France, and a growing desire to crush her since her friendship could not be obtained. In France the memories of the great war had left undying hatred, the statues of the lost provinces remained draped in mourning, and there lingered the dream of revenge and the redemption of Alsace and Lorraine. In eastern Europe a mightier conflict was looming up between Teuton and Slav, a conflict growing in the lap of fate. And finally, the nations whose increase was rapid were allied with time which would surely hereafter give them victory. It was to the interest of France and England to strike before there were more German millions. It was Germany's interest to wait, except that Russia growing still more rapidly made it fatal for her to delay.

A peculiar cause is thought by some to have been the changing character of the German people. It is probably true that Germany had been altered by too great success. The unparalleled triumphs of the Franco-Prussian War had given German leaders supreme confidence, and to the soldiers belief that they were invincible. This feeling, which might have become nobility and firmness, tended to appear as haughty arrogance, because of the completeness with which it possessed men's minds, and because of a materialism based upon immense material prosperity. Kindliness and homely virtue might still be the character of many

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Germans, but this was thought to be less evident than half a century before. The ruling caste and hosts of followers now worshipped might and force and power. According to hostile foreigners, the teaching of Nietzsche that Christian morality was the base and servile relic of olden times so far prevailed that by Germans Christianity was being discarded. Old, pernicious doctrines that might was right, and the end makes good the means, reappeared in new and dangerous guise. In other nations arose distrust and appalling fear that Germany would strike without pity and without remorse, and exact to the very uttermost, while in Germany such boasts were loud and frequent. All this was best expressed in the writings of Bernhardi, well known now, but more dreadful when they first appeared: that war was necessary and ennobling, that no consideration outweighed necessity, that France must be struck down so that never again could she be an opponent, that the reckoning with England must follow, and that superior German culture must be spread by the sword.

But much that her enemies regarded as arrogance and aggression was always the expansion and increase and prosperity of Germany, and she saw in their fear of her and combining against her only bitter and dangerous envy. England seemed the greedy opponent, lying across her way and thwarting expansion; France a neighbor whose friendship had often been sought, who persisted in sullen wrath; Russia a power inferior and reactionary, but huge and perpetually a menace. To German people, wedged in between these foes, military perfection did not seem essentially militaristic, but the sole shield with which they warded off ruin and death. And to many the aggressive spirit, acknowledged to exist, was only that spirit which had once given their rivals a glory and a success which the past had denied to themselves.

The torch was kindled in the Balkans. Austria desired to recover what was lost in 1913. Servia stronger and more ambitious now yearned to possess Servian provinces which Austria had annexed in 1908. In Bosnia and Herzegovina was begun a propaganda, supported probably by Servian authorities, irritating to Austria and dangerous, and which culminated in June

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in the murder of Franz Ferdinand, heir to the Austrian throne. Austria, to avenge this crime, hoping, perhaps, to crush her insolent little neighbor, and apparently seeing an opportunity to regain the leadership of the Balkan peninsula, launched at Servia an ultimatum which no independent state could entertain. The terms of this ultimatum and the scant time allowed for an answer made it evident that Austria expected no compromise. The Servians appealed to Russia. If their country made entire surrender, or if Russia failed to respond, then Slav predominance in the Balkans would be only a memory of the past.

Russia gave support, and Austria and Russia began to mobilize. There was small chance that Austria could withstand the onset, or that Germany would permit her to be crushed alone. But because of the alliances which existed, if Germany entered the lists, then France must enter also, and the general conflagration would begin. Though we may not know certainly, it seems that France and England desired peace, and made efforts to secure it. The hopes of Europe, therefore, lay in the possibility that Germany might restrain her ally, and that Austria, though exacting from Servia satisfaction, might allay the apprehensions of Russia.

And now millions of humble people and travellers scattered across the continent became aware of the cloud which rose like a hurricane. Difficulties appeared in the way of peace. The ominous hush was broken by the march of troops and the rattle of arms. "The angel of death is abroad. We may almost hear the beating of his wings."

Upon whom the blame directly rests must long remain matter of opinion. Austria abated her demands too late. Germany arming apace required that Russian mobilization cease. France receiving peremptory question what she would do, replied that she would act as became the interests of France. In the early days of August there was war between Austria and Servia, and between Germany and France and Russia. Italy finding her interest not with her allies declared that the terms of the alliance allowed her in the present situation to remain neutral.

The position of England was peculiar. In such a war her in-

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terests were bound up with those of France, with whom she had entered into such agreements that all the French navy was in the Mediterranean, while her own ships were in the North Sea. As a point of honor she could not allow France to be attacked by sea in the north. Moreover, if France were crushed, not only would England have lost her first line of defense, but if the writings of Pan-Germanists might be believed, all the coast from Antwerp to Boulogne would be seized, and Germany could then wait at her leisure for "the day." If war between England and Germany were inevitable, as many believed, then it was far better to fight now along with Russia and France, than without friends contend with a mightier Germany of the future. But a strong party asserted that conflict could be avoided in the future, and that to fight in this war meant strengthening Russia, a crime against Germany and civilization.

Germany herself decided the issue. The frontier of France from Belfort to Verdun was well-nigh impregnable. The general staff believed that a war against France and Russia must be fought by the swift crushing of France and the turning against Russia with full force, and it was suspected that German armies might in case of need march straight through Belgium upon Paris. Belgium desired above all things to remain out of the strife, but it was her misfortune to lie in the way. Certainly the neutrality of the country had been guaranteed by a treaty to which Prussia had been signatory, but as the chancellor said, necessity knows no law, and the man who hews his way must not think of the wrong he does. The beginning of hostilities saw the violation of Luxemburg and Belgium. Then were awakened all those apprehensions which had existed in England from the time of Elizabeth to the younger Pitt, and a few days more found England with Belgium in the circle of Germany's foes.

It has been thought that this summer was chosen to precipitate the conflict because of the supposed weakness of the Triple Entente. France was distracted by scandal and confession of military weakness; Russia by industrial unrest; and England by the controversy over Home Rule. It might well have seemed in

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Berlin that the moment was at hand to strike for world dominion —or downfall.

But however this be, it may be seen that the causes which led to the cataclysm had long been in operation. They must be sought in the curse of militarism, the spoliation and resentment of France, the envy and apprehension of England, the arrogance and prosperity of Germany, the weakness of Austria, the rise of the Balkan states, and the glowering menace of Russia.

The blood and the tears and the ruin of Europe bring little of hope as yet. Russia all-powerful and reactionary? Germany over Europe, omnipotent in arms? Europe exhausted and spent? Perhaps in some wondrous way good will be wrought from the wreck, but this we do not yet see. Man who knows little of the present knows not the future, and must watch in dumb expectation the loom of the universe rush on.

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DECISIONS OF THE SUPREME COURT OF THE UNITED STATES ON CONSTITUTIONAL QUESTIONS, 1911–1914

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As the last summary in the REVIEW of the decisions of the United States Supreme Court on constitutional questions included the cases at the October term, 1910–1911,[1] it may be desirable now under a few headings to group the cases which seem to be of fundamental importance decided during the three judicial years commencing in 1911 and concluding in 1914. Without any numerical summary (which would be difficult and of little value in view of the fact that many cases in which constitutional questions are raised by counsel and briefly referred to by the court are of no significance as indicating any new development or application of constitutional provisions) it may safely be said that the number of important cases in which difficult constitutional questions have been decided has during this period been unusually large. As the activity of Congress in pushing its legislative power constantly closer to the line of its constitutional authority increases, the number of cases in which the limits of such authority are necessarily involved must also increase. But it may further be suggested by way of rough generalization that the principles of constitutional law relating to other subjects on the boundary line between state and federal legislative powers has become reasonably well established, and comparatively few cases of importance relating to their application have recently been decided by the Supreme Court.

[1] *American Political Science Review* (1912), vol. vi, pp. 513–523.

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EXERCISE OF POWERS BY FEDERAL GOVERNMENT

Some cases relating to the exercise by the federal government of its constitutional powers may well, however, be first noticed.

In exercising its power to establish a uniform rule of naturalization Congress in 1906 enacted a statute containing a provision for the cancellation of certificates of citizenship fraudulently and illegally procured,[2] and in the case of Luria v. United States[3] the question was raised whether this provision was applicable to certificates previously issued. The significant feature of the new provision was that if the alien to whom such certificate had been issued should within five years thereafter return to the country of his nativity or go to any foreign country and take permanent residence therein such act should be considered, *prima facie*, evidence of a lack of intention on his part to become a permanent citizen of the United States at the time of filing his application. The person to whom a certificate had been issued in 1894, soon after that date left the United States for South Africa and there remained a resident until the proceeding for the cancellation of his certificate was commenced in 1910, returning to the United States in the meantime only for a temporary purpose; and the Federal District Court in which the proceeding to cancel his certificate was instituted reached the conclusion as a matter of fact that the residence in South Africa was intended to be and was permanent in character and as a matter of law that under the presumption declared by the statute the certificate was therefore fraudulent and should be cancelled. This conclusion both as to fact and law the Supreme Court affirms on the ground that even during so long a period as five years the acts of the applicant for the certificate might be taken into account in determining his good faith in making it, and that as good faith intention to become a citizen of the United States was essential to the validity of the certificate issued to him, there was no unconstitutional deprivation of any right in subjecting a certificate issued before the passage of the statute to the test provided for therein.

[2] Act of June 29, 1906, Sec. 15, 34 Stat. 601.
[3] 231 U. S. 9.

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The status of the Pueblo Indians and in general the nature of the supervision which the United States is justified in exercising over the Indians and their lands is subject of consideration in United States vs. Sandoval[4] which was a prosecution under the laws of the United States for introducing intoxicating liquor into the Indian country. The question considered was solely whether the Indian pueblos in New Mexico are "Indian country" but as bearing upon that question the court considers certain portions of the enabling act under which the State of New Mexico was admitted to the Union, pertinent provisions of the act being that the convention adopting a state constitution should provide by an ordinance irrevocable without the consent of the United States and the people of said State that the introduction of liquors into Indian country including "all lands now owned or occupied by the Pueblo Indians" was forever prohibited, and that all the laws of the United States prohibiting the introduction of liquor into the Indian country should apply to the Pueblo Indians and their lands. The validity of these provisions of the enabling act as against the contention that Congress cannot deprive a newly admitted State by compact, although declared to be irrevocable, of its right to regulate its internal police affairs, nor thus reserve to itself the right to regulate, manage and control private property in such State is met with the suggestion that proper subjects of Congressional legislation may be regulated by an enabling act deriving its force, not from its nature as a compact, but from the authority under which it is enacted and that if the subject matter was one for Congressional legislation the form of the enactment was immaterial. As to whether the status of the Pueblo Indians and their lands is such that Congress may prohibit the introduction of liquors into such lands is therefore found to be the vital question in the case, and after a consideration of the history of the relations of the Pueblo Indians to Mexico before the termination of Spanish sovereignty and later to the government of the territory of New Mexico, the court reaches the conclusion that without regard to whether these Indians have become citizens of the United States they require

[4] 231 U. S. 28.

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special consideration and protection like other Indian communities, and that not only under the constitutional authority to regulate commerce with Indian tribes, but also under a power arising from the necessary exercise on the part of the federal government of the right to subject the Indians to guardianship for their own protection and in their own interest, Congress was authorized to enact the regulations in question For these reasons the court holds that the legislation in question does not encroach upon the police power of the State or disturb the principle of equality among the States.[5] Under quite similar reasoning the court holds in United States vs. Pelican[6] that Congressional legislation for the punishment of crimes committed against Indians upon lands constituting part of an Indian reservation at the time of the admission of a State into the Union but subsequently allotted to the Indians in severalty, continued valid and effectual for the conviction of a white man for the murder of an Indian on such lands.

RELATIONS OF THE STATES TO THE UNITED STATES

That there was no purpose in the case of United States vs. Sandoval, supra, to abandon the rule often announced that the powers of a State after admission to the Union are not limited or restricted by any compact embodied in the enabling act is clear from the decision in Alabama vs. Schmidt,[7] that school lands conveyed to a State in connection with its admission to the Union become absolutely and without limitation the property of the State, to be managed by it or sold as it may see fit without further grant of authority.[8]

[5] The nature and extent of the power of the federal government to legislate with reference to the introduction of intoxicating liquors into an Indian reservation, although it may be within the limits of a State, is discussed with the same result in Perrin vs. United States, 232 U. S. 478.

[6] 232 U. S. 442.

[7] 232 U. S. 168.

[8] See also Cincinnati vs. Louisville & Nashville R. Co., 223 U. S. 390, in which the court holds that the compacts embodied in the Ordinance of the Northwest Territory ceased to be obligatory on the States carved from that Territory after their admission to the Union.

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An important question as to the relation of the States to the United States is involved in a line of decisions as to the power of a State to impose upon a foreign corporation, as a condition of its right to do business in the State, that it shall not remove causes to the federal court. In a suit by a citizen of Oklahoma brought in the court of that State against a railroad company, incorporated in another State, the defendant asked a removal on proper grounds to the federal court, and in pursuance of authority attempted to be conferred upon him by a state statute, the Secretary of State declared the license of the defendant company to transact business in the State to be forfeited and revoked. The conclusions reached by the Supreme Court in Harrison vs. St. Louis & S. F. R. Co.[9] as the result of many previous cases is that the statute is invalid as plainly and obviously forbidding a resort to the federal courts on the ground of diversity of citizenship between such parties. In the later case of Missouri Pacific Ry. Co. vs. Larabee[10] the same proposition is reasserted with the result that a state statute is held unconstitutional which purported to allow the taxation as damages in an action determined in the state court of attorney's fees for prosecuting a writ of error to the Supreme Court of the United States, should such a proceeding be resorted to by the unsuccessful party, no such allowance of attorney's fees being authorized by the federal statutes.

The old question as to the right of a State to tax the instrumentalities through which the federal government exercises its powers was raised in a case in Minnesota in which the Supreme Court of that State sustained the validity of a state tax on bonds issued by municipalities in the Indian Territory and the Territory of Oklahoma while those territories were in existence. On appeal to the Supreme Court of the United States the judgment of the Minnesota court was reversed[11] on the ground that the subsequent action of Congress in erecting the territories into a State with or without an assumption by the new State of the obli-

[9] 232 U. S. 318.
[10] 234 U. S. 459.
[11] Farmers, etc., Bank vs. Minnesota, 232 U. S. 516.

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gations of the former federal agency would be in effect to impair the obligations of a contract. This result is predicated on the general proposition that not only the territorial governments but the municipalities of the territories were instrumentalities and agencies of the Federal Government with whose operations the States were not permitted to interfere by taxation or otherwise, the issuing of municipal bonds being the performance of a governmental function.

The duty of the United States to guarantee to every State a republican form of government is considered in Pacific Telephone Co. vs. Oregon,[12] in which the constitutionality of a statute imposing a tax on telegraph and telephone companies was questioned on the ground that it had been adopted under provisions of the state constitution authorizing legislation by initiative. The contention of the appellant was that it is an essential characteristic of a republican form of government that the legislative power be exercised by a legislative department composed of representatives of the people chosen by election. It was also contended that the enforcement of a tax imposed otherwise than in the exercise of legislative power constituted a violation of the guarantee as to due process of law. The court reaches the conclusion that the argument as to due process of law is necessarily involved in the question as to a republican form of government and as to that question after restating at length the discussion in the historical case of Luther vs. Borden,[13] announces its conclusion in conformity with the reasoning of that case that the determination whether a state government is republican in form is political and not judicial in its character, and points out that the assault which the contention advanced by the appellant makes "is not on the tax as a tax but on the State as a State," and that such contention is made, "not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State,

[12] 223 U. S. 118.
[13] 7 Howard, 1 (1849).

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republican in form." This case furnishes the final answer to the question raised as to the validity of the amendment to the constitution of Oregon, adopted in 1902, authorizing the exercise of legislative power by the people under the initiative and referendum, which as against the claim that it provided for a government not republican in form was sustained by the Supreme Court of that state in Kadderly vs. Portland.[14]

PROTECTION OF DEFENDANT IN CRIMINAL PROSECUTION

The guaranty of the Fourth Amendment of the Federal Constitution against unreasonable searches and seizures was involved in Weeks vs. United States.[15] In a district court of the United States Weeks was charged with violation of the federal statute prohibiting the use of the mails for the purpose of transporting lottery tickets and complained of the introduction in evidence against him of certain papers including lottery tickets and letters in respect to the lottery which had been taken by the United States marshal on a search of his private room without warrant. The validity of this method of securing evidence had been questioned by an application made by the defendant to the trial court preliminary to the trial in which he had set forth the facts as to the method in which the evidence had been procured and asked that the officer be required to return to him the papers thus taken, which application the court refused. The holding in the Supreme Court is that such application should have been granted and that there was reversible error in afterwards admitting such papers in evidence over the defendant's objection. The court recognizes the rule frequently announced that on the trial of a criminal case the court is not required to enter into a col-

[14] 44 Oregon 118 (1903). The validity of a city ordinance adopted by referendum was sustained in the case of Pfahler, 150 Cal. 71 (1907). The same conclusion as to the validity in this respect of city ordinances was reached in Eckerson vs. Des Moines, 137 Iowa 452; while a different conclusion was announced in the case of Farnsworth, 61 Tex. Crim. Rep. 342, 135 S. W. 535, 33 L.R.A. (N. S.) 968 (1911). Constitutional provisions for legislation by the initiative and referendum have been sustained in the cases of Hartig vs. Seattle, 53 Wash. 432 (1909), and Ex parte Wagner, 21 Okla. 33 (1908).

[15] 232 U. S. 383.

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lateral investigation as to the method in which competent evidence has been secured, but distinguishes the present case on the ground that as the defendant had made a seasonable application for the return to him of the instruments of evidence taken in direct violation of his constitutional rights, the subsequent admission of such instruments in evidence against him was a prejudicial error for which a reversal should be granted.

INTERSTATE COMMERCE

While there have been many cases decided involving questions of interstate commerce and therefore dependent in a general way on the constitutional provision giving Congress power to regulate commerce among the several States, such cases for the most part involve only the construction of statutes, the constitutionality of which is conceded. A few questions have arisen, however, in which the court has been required by the nature of the case to go back to the fundamental propositions as to what is commerce among the States and to what extent the grant of such power excludes state legislation.

Of the cases defining interstate commerce, by far the most important are the Pipe Line Cases,[16] in which certain companies, owning pipe lines for the transportation of oil from one State to another, contested the validity of the provision of the Hepburn Act[17] making the Interstate Commerce Act applicable to any corporation or person engaged in the transportation of oil by means of pipe lines. In the exercise of the authority thus conferred the Interstate Commerce Commission required such companies to file with the Commission schedules of their rates and charges and suit was brought in the Commerce Court to annul this order. The showing was that the companies contesting the validity of the order of the Commissioners were all engaged in the transportation of oil through pipe lines owned or controlled by them only in case that the oil to be transported was sold to the company transporting it on terms more or less dictated by itself, save that one of the companies was engaged only in transporting

[16] 234 U. S. 548.

[17] Act of June 29, 1906, 34 Stat. 584.

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through its pipe lines oil produced by its own wells in one state to its refinery in another state. The fundamental contention seems to have been that as the statute amended regulates only common carriers it could not be applied to companies engaged only in the transportation of their own property; but this contention is met with the assertion by the court that the statutes mean no more than that those who are common carriers in substance must become such in form, for in fact they afford the only practicable means of shipping oil from large interior oil fields to the sea coast for disposal. The reasoning of the case seems to be that those who see fit to engage in the transportation of oil by pipe lines from one state to another may be prohibited from doing so otherwise than as common carriers. The majority of the court was also of the opinion that the company engaged in transporting oil from its own oil wells in one state to its refinery in another was not within the provisions of the act. The chief justice on this point differed from the majority, being of the opinion that while the business of such company in the transportation of oil was interstate commerce within the meaning of the statute, the statute could not be made applicable to it without violating the due process clause of the Fifth Amendment, since to apply it in such case "would necessarily amount to a taking of the property of the company without compensation." In a dissent Mr. Justice Kenna insists that the companies did not devote their lines to a public use when they were used only in the transportation of oil which the companies had purchased and that they could not be compelled by legislation to abandon the use of such lines otherwise than as common carriers. The result of the majority opinion is apparently to authorize legislation declarative of a public use based on economic considerations in respect to privately owned property employed solely in the private business of the owner.

The subordination of state regulations to regulations imposed on common carriers by federal statutes enacted under the power to regulate interstate commerce is emphasized in the Shreveport case,[18] involving the validity of an order of the Interstate Com-

[18] Houston, etc., R. Co. vs. United States, 234 U. S. 342.

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merce Commission that higher rates should not be charged for interstate shipments than were charged by the carriers for corresponding service under similar conditions for transportation on their lines between points in the same state. Conceding that the rates between points in the same state were subject to state regulation, the court reached the conclusion that nevertheless charging a lower rate for the carriage of goods between points in the state than that which the carriers were authorized to charge for same transportation from a point without the state to a point within the state was a discrimination against interstate commerce and it says that "wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the Nation, would be supreme within the national field." And further: "This is not to say that Congress possesses the authority to regulate the internal commerce of a state, as such, but that it does possess the power to foster and protect interstate commerce, and to take all measures necessary or appropriate to that end, although intrastate transactions of interstate carriers may thereby be controlled." The result of the case seems to be that a common carrier engaged in interstate business and complying with the rates fixed for such business by the Commission may be prohibited from discrimination against its interstate business by charging a lower rate for intrastate business, though the latter rate is fixed by the state, so as to induce shipments to be made between points in the state which would otherwise be made to points outside of the state. Two justices dissent from the court's opinion. It is to be noted that the court cites without comment the Minnesota Rate Cases,[19] in which state rates affecting only intrastate commerce were sustained as against the contention that they resulted in a discrimination against interstate shipments. The distinction between the cases no doubt is that in the Minnesota Rate Cases the question was primarily

[19] 230 U. S. 352.

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as to the validity of state legislation, while in the last case the question was directly involved as to the validity of an order of the Interstate Commerce Commission made in the exercise of powers conferred upon it.

Nevertheless the proposition is still adhered to that state regulations of the business of common carriers are valid, although indirectly affecting interstate commerce, so long as the federal power has not been exercised as to the same subject matter; for it is held in Atlantic Coast Line R. Co. vs. Georgia[20] that a state statute requiring railroad companies to equip their locomotives with electric headlights can be enforced although such locomotives are being employed as instrumentalities of interstate commerce.

Notwithstanding the decision in Adams Express Co. vs. Croninger[21] and many cases following it that in view of the insertion in the Interstate Commerce Law by the Carmack Amendment to the Hepburn Bill of the provision that common carriers engaged in interstate commerce shall issue through bills of lading, state statutes are invalid as to interstate commerce which prohibit the issuance of bills of lading containing a limitation of liability to the value stated therein by which the rate of compensation is determined, or forbid a short limitation of time for making claims for damages,[22] nevertheless in Missouri, K. & T. R. Co. vs. Harris,[23] the court sustains as still valid and not superseded with reference to interstate commerce by the Carmack Amendment, a state statute imposing attorney's fees as a part of the damages which may be recovered for breach of the carrier's duty.

CONTRACT OBLIGATIONS AND OTHER VESTED RIGHTS

The distinction between the police regulation of the exercise of rights conferred by a franchise and the complete abrogation of a franchise which is not in itself in excess of the power of the municipality to grant is pointed out in Grand Trunk Western

[20] 234 U. S. 280.

[21] 226 U. S. 491. The cases following this are numerous. They are cited in Missouri, K. & T. R. Co. vs. Harris, 234 U. S. 412.

[22] Missouri, K. & T. R. Co. vs. Harriman, 227 U. S. 657.

[23] 234 U. S. 412.

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R. Co. vs. South Bend,[24] and a state decision upholding the partial repeal of an ordinance granting such a franchise is reversed (two justices dissenting). Likewise in Owensboro vs. Cumberland Telephone Co.[25] an ordinance granting a perpetual franchise for the use of the streets of a city for telephone purposes is sustained against the contention that in the granting of such a franchise without limitation there is an implied reservation of a power to repeal. From this conclusion, four justices dissent.

DUE PROCESS AND EQUAL PROTECTION

As is usual in reviewing the decisions of the Supreme Court involving constitutional questions, the large majority are found to relate to the limitations on state legislative power found in the provision of the Fourteenth Amendment guaranteeing due process of law and the equal protection of the laws. Of these, however, few announce any new principles or rules of decision, though some interesting illustrations of rules previously announced are to be found.

The extent to which the state may go in the regulation of private business without transgressing the limits of due process of law or the equal protection of the laws is the subject of the decision in German Alliance Ins. Co. vs. Kansas,[26] involving the right of a state to regulate fire insurance rates. Conceding that the right to prosecute the business of insurance is a natural right, receiving no privilege from the state, voluntarily entered into and concerning only personal contracts for indemnity, the majority of the court holds that such private business is in its nature nevertheless affected with a public interest and therefore subject to state regulation as to rates. Three judges dissent on the ground that under the Munn Case[27] which furnishes a landmark, the business must be affected with a public interest and the property employed in its prosecution must be devoted to a public use, and without the concurrence of public interest

[24] 227 U. S. 544.
[25] 230 U. S. 58.
[26] 233 U. S. 389.
[27] 94 U. S. 113.

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and the employment of property devoted to public use, the right to fix rates or prices does not exist; and that as the insurance business involves only the making of contracts it is not subject to the rate-making power of the state. That the police power does not, however, include the power to interfere with the use of property purely private in its nature for the promotion of the general welfare or pecuniary interests of the owners of other property is illustrated by the case of Eubank vs. City of Richmond[28] in which it is held (reversing the decision of a state court) that an ordinance fixing the building line on private property abutting a street according to the wishes of the majority of the property owners is not valid as against an owner who is thereby prejudiced. As to forms of business which are in their nature subject to police regulation such as the sale of intoxicating liquors, the legislative power of the state is not subject to judicial review on the ground of wisdom or reasonableness and it is therefore held in Purity Extract Co. vs. Lynch[29] that a state statute having for its general object the prohibition of the sale of malt liquors was not unconstitutional although it might result in the prohibition of the sale of liquor not in fact intoxicating or otherwise injurious. Likewise it was held in Hammond Packing Co. vs. Montana[30] that a state might forbid the manufacture of oleomargarine without violating the due process or equal protection provisions.

That the right to make contracts may be interferred with in the exercise of the police power without infringement of due process of law is decided in Schmidinger vs. Chicago[31] upholding the validity of a statute regulating the weight of loaves or bread offered for sale; and in Sturges & Burn Mfg. Co. vs. Beauchamp,[32] sustaining a state statute prohibiting the employment of persons of tender years in dangerous occupations. In Erie R. R. Co. vs. Williams[33] the court, following many previous cases, again sus-

[28] 226 U. S. 137.
[29] 226 U. S. 192.
[30] 233 U. S. 331.
[31] 226 U. S. 578.
[32] 231 U. S. 320.
[33] 233 U. S. 685.

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tains the validity of a state statute regulating the payment of wages to employees, with the pertinent suggestion that the employer cannot complain that such a statute interferes with freedom of contract on the part of the employee. Such a statute applicable only to particular classes of employers has also been sustained as against the objection that it was not applicable to other employers who might improperly engage in similar practices.[34]

That the guarantee of equal protection is not infringed by a classification which has regard to the evil to be remedied although it results that similar evils are not reached is illustrated by the case of International Harvester Co. vs. Missouri[35] in which a state antitrust act was sustained, although it did not apply to labor organizations nor to purchasers as distinct from sellers combining in restraint of the freedom of trade. But in Smith vs. Texas[36] it is held that equal protection of the law is denied by a state statute so fixing the qualifications for pursuing the business of a railroad conductor as to exclude from such employment persons equally qualified with those who by statute are permitted to pursue it. On the other hand in Patsone vs. Pennsylvania[37] a state statute was sustained which made it unlawful for any unnaturalized foreign born resident to kill any wild bird or animal and in furtherance of this general purpose, declared it "unlawful for such foreign born person to own or be possessed of a shot gun or rifle," the contention as to discrimination being met with the suggestion that the state legislature could not be assumed to have acted without warrant in making a classification to cover the peculiar source of the evil which it is desired to prevent.

[34] Keokee Coke Co. vs. Taylor, 234 U. S. 224.
[35] 234 U. S. 199.
[36] 233 U. S. 630.
[37] 232 U. S. 138.

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THE ESSENCE OF DEMOCRACY

WILHELM HASBACH

Mr. W. J. Shepard, in a review of my work, *Die moderne Demokratie*,[1] remarks that I have forgotten its spirit in the study of its forms. "It is not the vitalizing spirit," he writes, "the impelling motive force, the broadly based popular sentiment of democracy that is of interest, but only the forms and mechanism . . . . of democratic-republican states." Now I have in the fifth chapter of the second book presented the theory of political democracy, in the sixth that of social democracy, and in the seventh that of democratic socialism; and in the first of these three chapters I have discussed popular sovereignty and active citizenship, the supremacy of the majority in a democracy, the unlimited constituent power of the people (*pouvoir constituant*), in which European science has conceived the essence of this form of the state to reside in contradistinction to other forms. But Mr. Shepard has a different conception of its nature. He has raised an interesting question in this connection which I should like to discuss in the following pages.

Brief though his statement on this point is, no one can doubt that he considers the supremacy of public opinion as the essence of democracy, since he writes: "No discussion of the nature, elements and effects of public opinion, no appreciation of the spirit of democracy is to be found in the covers of this volume." As a matter of fact I have treated of this subject in the above-mentioned first division of the fifth chapter, which is devoted to the discussion of popular sovereignty, though certainly in the brief compass which appeared to me sufficient for the understanding of the nature of democracy. Why have I not ascribed the same significance to it as does Mr. Shepard? Because public opinion rules in every modern form of the state; not only in

[1] In the *American Political Science Review*, November 1913.

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democracy, but also in parliamentary and even in constitutional monarchy. The rights of man exist likewise in constitutional monarchy; freedom of association and the press are here also established; here also thousands of newspapers and associates seek to realize their ideals and desires, and if necessary to influence parliament. Nothing could be more mistaken than to assume that government here could premanently be conducted against public opinion. To be sure Bismark succeeded in this for several years, but under quite peculiar circumstances, and when he had attained his patriotic goal he sought indemnity. But that such discord may occur also in a democracy is proved by the conflict between Lincoln's successor and congress, or that between MacMahon and the French chamber.

If we accept the supremacy of public opinion as the essential characteristic of democracy, it is quite impossible to distinguish the forms of the modern state; all differentiation of definition is annulled. Everything is fused into a vague conception of "democracy." It would be exactly like calling the circulation of the blood the essential characteristic of the species Man.

But since science presupposes the ability to differentiate by clear cut and sharply circumscribed definitions, we must go a step farther. For this purpose I repeat briefly what I have said about public opinion in the above-mentioned citation. I distinguish between a spontaneous and an artificially constructed public opinion. In every case, I have there stated, there is an original public opinion on definite questions (in which I of course premise European continental conditions), e.g., that the reduction of military service would be an advantage, that certain communal taxes should be abolished. But concerning the questions: gold standard or double standard; continuation of canal construction with the extension of the railway system—concerning these, an opinion would have first to be formed in the leading circles which then through agitation would be propagated among the masses. Moreover since there are generally several opposing opinions upon current questions, of which only one can be dominant in parliament, it is not public opinion pure and simple which rules, but the stronger (artifically formed) public opinion, which however as

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a matter of fact might be in a minority among the electors; while that public opinion which is the weaker in parliament, but perhaps stronger among the voters, is for long periods suppressed.

With the distinction between a spontaneous public opinion and a public opinion disseminated by agitation, the question presents itself: Who forms public opinion? In democracy and parliamentary monarchy it is created exclusively by parties; in constitutional monarchy, on the other hand, by parties and the government. For a full understanding of this important difference we first must clearly distinguish between parliamentary and constitutional monarchy. In parliamentary monarchy the influence of the monarch is as a matter of fact so far suppressed that here too the stronger party opinion determines the destiny of the country, while in the constitutional monarchy the prince as joint possessor of the legislative power, and as the possessor of the executive, exercises a considerable influence upon the formation of public opinion. The ministers nominated by him introduce bills into parliament; they defend them against the criticism of representatives whom they are compelled to face; the prince addresses messages to parliament; he can dissolve it and thereby take a position on definite question; official newspapers defend the attitude of the government; party organs which approve the policy of the government support it or open their columns to it; the government seeks to influence representatives, etc. These are methods some of which are also understood in America: in America the President addresses messages to congress; presidents and governors attempt to influence the legislative power; there are also newspapers which support President and governors against the legislative assemblies if they consider the former's policies advantageous.

This discussion suggests why I have considered the fly-wheel of democracy and of parliamentary monarchy to be not public opinion but the domination of party; why I have devoted to this subject the entire third book of my treatise. But how distinguish democracy from parliamentary monarchy?

If we consider the frequent disregard of the people's wishes by their representatives since the days of the Long Parliament,

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the relentless efforts of these representatives to emancipate themselves from their constituents; if we think of the numerous measures which have been taken in both the United States and in Switzerland to subject the representatives to the will of the people, it must be clear that parliamentary government and democracy are not simply identical. Democracy exists only where, as in some of the cantons of Switzerland, the people determine directly their own destiny, or where through direct primaries, the referendum, the initiative and the recall they are able to enforce their will upon their representatives. It follows that parliamentary government is that form of the state in which party exerts its will through representatives of the people; democracy is that form in which this is done through the people themselves.

This proves sufficiently that the essential characteristic of a form of the state can express itself only in definite institutions and forms. These are, therefore, not merely important objects of study; they are indeed to be described as "natural," since they are, so to speak, the outer form which the spirit of different types of the state has created for itself without which it could have no existence. But Mr. Shepard calls the form "artificial." "Natural" he apparently considers the expressions of public opinion. Does he really believe that the public opinion expressing itself at elections to the effect that the silver standard alone will guarantee the public welfare is a natural fact? Let us draw some conclusions from this. The parliamentary democracy, as it exists in France, is from the standpoint of definition a contradiction in itself. Representative democracy as we have it in the American Union and in most of the member States cannot be considered pure democracy. It is closely related in its character to constitutional monarchy because Montesquieu is the common ancestor of both. But since the fathers of American representative democracy had to realize their ideal under different conditions, the idea of Montesquieu has taken a form in the United States different from that which it has taken in Germany. Hamilton, Madison and their associates sought to infuse this idea into a state whose fundamental principle was that the will

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of the people should be realized through representatives; party they viewed with doubt. Hence all the barriers of the separation of powers, which they had set up against the omnipotent will of the people, gradually break down; it is sufficient to recall the arrangements concerning the election of the President and of the senators and the progress of direct democracy in the individual States. In constitutional monarchy, on the other hand, such barriers could be maintained. In the second place, the separation of powers was realized in a far more absolute fashion than was possible in the old monarchies. The monarch preserved much greater power because he was not elected, although he was compelled to share the legislative power with parliament. It was impossible that the legislative power should become as independent as in America; parliament and ministers must coöperate and, mutually controlling each other before the people, satisfy popular demands. In the third place, the bureaucracy was maintained which was appointed on the basis of prescribed qualifications and was not arbitrarily removable. It was indeed with this bureaucracy that the European monarchs had developed, if not created, the culture of their countries.

It is interesting to perceive that, while on the one hand the idea of pure democracy has more and more asserted itself successfully in America, on the other hand several features of constitutional monarchy appear desirable to many citizens; such features are the greater power of Presidents and governors; an efficient civil service, independent of parties and appointed on the basis of prescribed qualifications; the appearance of ministers in the legislative body and the reciprocal control of government and representatives, "to set up one tyrant against another," as a Leveller in the seventeenth century expressed it (compare the Oregon plan of government).

If now we glance back upon this short discussion, we see that the supremacy of public opinion cannot be accepted as the essence of democracy. Since it rules in all modern states the important question is: How it is formed? On the other hand the conception of the stronger opinion enables us to distinguish constitutional monarchy from democracy and from parliamentary

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monarchy—in the constitutional monarchy the party opinion rules as if it were dampened. Democracy and parliamentary monarchy are distinguished by the organs through which the stronger party opinion is realized,—in the latter by the representatives of the people; in the former by the people themselves or by their representatives under the supervision of the people. Thus the classification of the forms of the state, created by the Greeks, remains true. Today there is still a monarchy, but a modern monarchy, the constitutional monarchy. Today there is still an aristocracy, but a modern one, that of parliamentary government. As in classical antiquity, there are real effective monarchies, which modern aristocratic and oligarchical elements are at work to overthrow. And today there is an old as well as a new democracy which maintains the appearance of parliamentary government while denying it all effective power, just as oligarchical and aristocratic elements aim to subdue monarchy while allowing it the appearance of power in parliamentary monarchy.

Forms are not only expressions of the spirit; they react also upon the spirit that dominates different forms, as I shall prove in the case of constitutional monarchy.

In constitutional monarchy the party leaders are not the government; that is the reason why all parties stand continually opposed to it. There is ample opportunity for giving vent to this distrust because the government has to defend its measures in parliament. There is no form of government in which financial administration is so painfully scrutinized; there is no other form where delinquencies of officials are so pilloried. Since through this watchfulness the interests of the citizens are protected, the unpolitical instinct of the citizen, which you find in all state forms, and which is in itself completely justifiable, grows; governments are indeed created so that the citizen may, undisturbed, devote himself to his business. A further result is the high value set upon the professional bureaucracy; ministers issue from the highest social strata. The highest social classes prefer above all things to have their children enter the bureaucracy which attains the highest posts of honor. Honor, according to

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Montesquieu, is the principle of monarchy. Thus is a standard of measurement created which is valid for all classes. Those who do not belong to the bureaucracy at least seek titles and orders which express an affiliation with it. Neither membership in parliament nor wealth as in democracy is able completely to satisfy ambition, not even nobility. Read the Memoirs of the Duke of Saint Simon—how he execrates the social claims of bureaucracy, and especially the war minister, Louvois. Traces of this spirit are to be observed even in the Freiherr vom Stein and in Bismarck, although the nobility had played a leading rôle in the formation of the bureaucracy.

Do I need to explain explicitly to a judge of human nature how many enemies such a form of the state will create for itself? Such are the party leaders who find the way blocked to the highest posts of honor, parties endeavoring to dominate the state and to exploit it for themselves, interests which seek satisfaction through parties, and those wealthy people whose sons have not found places in the bureaucracy and who have not found social distinction by means of titles and orders. The extreme parties, moreover, attempt to prove again and again that the government is incapable and corrupt, at least reactionary, even when in many directions it may have assumed the lead and set a standard.

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THE FEDERAL TRADE COMMISSION: THE DEVELOPMENT OF THE LAW WHICH LED TO ITS ESTABLISHMENT

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It was Munn vs. Illinois[1] that first interpreted the constitutional provision empowering Congress to regulate commerce[2] in such a way as to charge private business with a public interest. Since that epochal finding our courts have made comparatively swift progress, reaching ultimately (through the Standard Oil[3] and tobacco decisions) a federal trade commission to regulate competition in trade and to restrain illegal combinations.[4] All of this has been done during the professional life of many lawyers of today, for Munn vs. Illinois was decided in 1876.

Writers upon the trend of legislation and of court decisions had clearly predicted this last development of corporation law.[5] The incident of climax importance however, was the remanding of the oil and tobacco cases to the circuit courts where the decrees of dissolution were to be worked out in conjunction with the department of justice. This was administrative work, and a department of the executive branch of the government should do it. Hence the creation of the trade commission, empowered to investigate the carrying out of the decrees of the supreme court and to prepare the form of decree in certain cases referred to it by the circuit courts.

[1] (94 U. S. 113.)

[2] Art. viii, sec. 1.

[3] Standard Oil vs. U. S. 221 U. S. 1. U. S. vs. American Tobacco Co. 221 U. S., 66.

[4] Sec. 5 and sec. 6 of act to create federal trade commission.

[5] Wyman, *Control of the Market*, Chap. x, 238; Chap. xii, 277; Van Hise, *Concentration and Control*, Chap. v, 270.

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Before analyzing the new commission it will be interesting to trace the development of court opinion by means of the cases which have brought us to our present conception of the law. Restraint of trade has been a topic of importance since the time of Elizabeth.[6] No ruling was made in this country, however, until 1876 when some farmers in Illinois sought to compel the firm of Munn and Scott, owners of a grain elevator, to store their grain without discriminatory charges. The proprietors, of course, insisted upon their inherent private property rights. The court defined the limits of private property rights under the common law, and, quoting Lord Chief Justice Hale (De Portibus Maris) said, ". . . looking then to the common law, from whence came the right which the constitution protects, we find that when private property is 'affected with a public interest, it ceases to be juris privati only.' " And the court found that the warehouses of the plaintiffs in error were so charged with a public interest.[7]

This was sure footing for a beginning. The court was clear and decisive in its position. Henceforth, even at common law, there was to be a public regulation of business "clothed with a public interest." We were soon to see a statutory qualification. Eleven years later, namely, in 1887,[8] Congress created the interstate commerce commission to regulate transportation rates. Lively opposition greeted the new board and "a time of suspended activity" in business was freely predicted.[9] Indeed, the public itself seemed not to understand the powers of the commission, and for some time the commission was not very effective.

The board, however, exercised its regulatory powers and the railroads did not become bankrupt. Public opinion gradually

[6] Stimson, F. J., Lectures, *Tendencies of American Legislation.*

[7] The court said: "Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations. Indeed, the great office of the statutes is to remedy defects in the common law as they are developed and to adapt it to the changes of time and circumstances."

[8] Approved, Feb. 2, 1887.

[9] Fin. Chronicle, vol. xlvi, 70, 100, 133.

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came to approve of its existence and there were audible mutterings about government control of industrial corporations as well. These found expression in a few years (1890) in the enactment of the Sherman anti-trust act[10] to restrain combination or conspiracy, the intent of which was to monopolize trade.

The armament of the "trust busters" was now deemed adequate; a commission to regulate railroads, and an anti-trust statute to cover everything else in interstate trade. But public opinion was again slow to apprehend.[11] The common law had declared a trust illegal[12]—what the Sherman act could do in addition, no one seemed to know. The spirit of the times was anti-trust. There was no doubt of that and the court had taken judicial notice of it.

In this state of confusion the "trust" lawyers decided to turn the new law to their own use. In 1894 they sought to have the combination clause of the act made applicable to the labor organization which called the great railroad strike, and they succeeded.[13] Indeed, Eugene V. Debs went to jail for contempt of the court's injunction. Here was a use of the Sherman act probably never contemplated by its framers. Incidentally, it illustrates the error of those of our own day who believe that labor unions are exempt from the law.

The next attempt to apply the Sherman act came in 1895 and this time it was against a corporation.[14] A company manufacturing sugar in Pennsylvania which was sold in New York, was held to be outside the pale of the law, for manufacture was held not to be interstate commerce and this was so whatever the intention of the manufacturer.[15] So far, corporations had profited by the law.

[10] Approved July 2, 1890. First three sections prohibit restraint and monopoly and seventh section gives party injured treble damages.

[11] Wyman's *Control of the Market.*

[12] People vs. North River Sugar Rfg. Co. (121 N. Y., 582).

[13] In re Debs (158 U. S., 564).

[14] U. S. vs. E. C. Knight (156 U. S. 1).

[15] The case turned on a close vote of 5 to 4. It has since been thought that the government attorneys were no match for the trust lawyers. At any rate, the view then announced, that manufacture was not commerce, has not since

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Two years after the labor case the tables were turned and the Sherman act received its first anti-corporation interpretation, when an agreement between railroads west of the Mississippi affecting freight moved within the so-called Missouri river territory (a typical pool) was held to be an attempt to restrain trade.[16]

Even the majority opinion in the Knight case assumed that transportation was within the Sherman act, but it still remained for a court to include everyday commerce. And to those who believe the present Democratic administration to be anti-corporation in establishing the trade commission, it may be of interest to learn that William Howard Taft was the first judge to apply the Sherman act to the ordinary industrial combination. The Addystone Pipe case[17] came up to the supreme court on appeal from the circuit court opinion written by Judge Taft, and that opinion was affirmed. Incidentally, it is worth noting that the case was one of the citations made by Chief Justice White in justifying the conclusions of the supreme court in the 1911 trust case.

Judge Taft's opinion defined interstate commerce very inclusively. It said, ". . . the soliciting of orders for, and the sale of goods in one state, to be delivered from another state, is interstate commerce in its strictest and highest sense." There was no doubt now as to whether the Sherman act applied to anything except transportation. The courts might vary the form of attack, but by 1899 they had clearly decided that every kind of interstate business was covered by the Sherman act.

been urged. Instead manufacture is regarded as one step in a scheme the entirety of which may amount to intercourse and trade, and when this trade is between states it comes within the Sherman act. It will prove interesting to read the ground taken by Justice Harlan who wrote the minority opinion.

[16] Trans-Missouri Freight Association (166 U. S. 290).

[17] U. S. vs. Addystone Pipe and Steel Co. (175 U. S. 211). This, briefly, was an association of pipe manufacturers with elaborate rules which precluded individual members from bidding upon jobs until the association had sold the right to go after the job to the member bidding the most for the privilege. Once a job was "sold" to a member, he was to be left free to get the best price he could without competition from others.

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And its next application was a variation in form of attack—a stretching of the law to include holding companies.

In the Northern Securities case the court said that a combination of two previously existing companies, effected through the common control by a third company, must not destroy competition, either actual or potential. This unquestionably struck at the legal device of a single company holding control of actual competitors. The end of industrial combination through the medium of the holding company was now in sight.

Public opinion very readily condemned Standard Oil and American Tobacco as huge holding devices, but it was only after some years of spectacular litigation[18] that the companies had their "day in court." So that, in 1909 when the cases reached the supreme court, that tribunal was chiefly concerned not with the question of legality but with the question of dissolution. By this time, the following had been accomplished:

The trust had been definitely held illegal.[19]

The pool was plainly wrong.[20]

The holding company ceased to exist in interstate trade.[21]

The single corporation had been found objectionable to some state courts,[22] and perfectly acceptable to others.[23]

The oil and tobacco companies had already been condemned at the tribunal of public opinion and courts could be counted upon to take cognizance of the situation. But public opinion also favored something constructive. And Chief Justice White's opinions in the oil and tobacco cases offered a happy solution of a bothersome problem. Competition was to be restored by the circuit courts and the department of justice in pursuance of the court's decree.

[18] Standard Oil had been fined $26,000,000 in the lower courts. American Tobacco had had the treble damage recovery clause of the Sherman act enforced against it.

[19] People vs. North River Sugar Rfg. Co. (121 N. Y., 582).

[20] Trans-Missouri Freight Association (166 U. S. 290).
White Star Line vs. Star Line (141 Mich. 604).

[21] Northern Securities (193 U. S. 197).

[22] Atty. Gen. vs. Booth (143 Mich. 84).

[23] Trenton Potteries vs. Oliphant (58 N. J., equity, 507).

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This ruling made necessary the new federal trade commission, for courts could not continue indefinitely to supervise the corporations they were forced to create. The dissolution of the Standard Oil Company created thirty-three separate corporations where before (1909) there were sixty, and segregated the tobacco company into fourteen companies. Some of these new corporations have capitalizations as high as $100,000,000. Thus the "big corporation" as an institution was judicially noticed. Unregulated competition was at an end. Regulation of competition is administrative work for an executive department. Hence the federal trade commission.

This is the legal genesis of the trade commission. Its functions are very elaborately prescribed in the law, and court decisions indicate how the commission is to exercise them. The commission must see to it that trade is not restrained, either by unfair competition or illegal combination. This work is not new, but it is an innovation to have a department of the government doing it. In addition the commission is to act as a statistical department for the nation, making investigations and reports concerning corporations and industries, domestic and foreign trade, etc.

But it is with its quasi-judicial powers we are concerned. Section 5 of the act prohibits unfair methods of competition and empowers and directs the commission to prevent persons from using them. The criticism has been made that this provision is unconstitutional.[24] But there seem to have been interpretations enough to indicate what the courts will regard as "unfair methods of competition," and in the last analysis it is the court holding that will really count, for all orders of the commission may be reviewed, upon petition, by the circuit courts of appeal. In a broad way, "that is held to be fair which the community regards as consistent with its safety; that is held unfair which the

[24] Fin. and Com. Chronicle., vol. xcix, 694, quotes Robt. R. Reed as follows: . . . "unfair competition . . . was recognized by the courts and in effect covered only unfair acts tending to the destruction of competition—acts, that is, which could be committed only in the attempt to establish a monopoly. 'Unfair methods of competition' is capable of no such construction."

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state considers dangerous to its peace."[25] More specifically, courts have held that it is not an unfair method of competition to make a representation concerning goods offered for sale by a rival so long as there is no imputation upon the rival individually, but only upon the goods which might be handled by anybody. So when a tradesman said that lubricators offered for sale by a rival were not good for that purpose but wasted the tallow, there was "damnum sine injuria."[26] It was held to be a fair method of competition for R. to make a preparation and call it "cherry pectoral" even though A. had for years been selling a preparation by that name, and the words had long been associated with his product. And R. could advertise as follows: "A.'s Cherry pectoral, $1; R.'s, 50 cents, which will you have?"[27]

Puffing statements have been held to be a fair method of competition, even when you wrap up a commodity in a paper bearing an advertisement of another brand of the same commodity, which advertisement says the second brand is better "than any other preparation yet offered."[28] It is a fair method of competition to put out goods in a way similar to that in which another brand of the same goods is handled, since these ways are common to the business concerned.

But it is an unfair method of competition to induce another to break a contract entered into with a rival even though the other contracting party had not begun its performance.[29] This is so in the case of a single contracting party as well as where many are concerned.[30] But query, where in spite of a pre-existing contract, one in absence of fraud, induces another to sell certain goods to him at a higher price than the vendor had already agreed to sell the same goods to another, and the purchaser knew of such earlier agreement.[31]

[25] Wyman, *Control of the Market*, Chap. iii.
[26] Evans vs. Harlow (Q. B. 1844).
[27] Ayer vs. Rushton (7 Daly 9).
[28] White vs. Mellin (House of Lords, 1895).
[29] Lumley vs. Gye (Q. B. 1853).
[30] Glamorgan Coal Co. vs. So. Wales Miners' Fed. (2 K. B. 545).
[31] Chambers and Marshall vs. Baldwin (91 Ky. 121).

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Of course fraud is always an unfair method of competition but courts have gone further and said that it is unfair to appropriate the use of a geographical name which has come to acquire a special signification when applied to certain commodities.[32] Likewise the use of one's own name has been restricted under such conditions.

Enough has been shown to indicate that the commission should not have great difficulty in saying what are "unfair methods." The new view as evolved from the cases has been defined as holding that every man in business has the right to freedom from competition unless competition can be shown to be justified, whereas the ancient view was that one could do anything that was legal to get business.[33]

Similarly the cases indicate what the commission may be expected to do in regulating combination. Upon the application of the attorney general the commission is to investigate any corporation alleged to be doing business in violation of the anti-trust act,[34] and that corporation is to readjust its business in accordance with the recommendation made by the commission. Where a final decree has been entered in any suit brought by the government against a defendant corporation to prevent restraint of trade, the commission is to make, on its own initiative, investigations as to the manner in which the decree is being carried out.[35] This is the work done by the courts in establishing the reorganized oil and tobacco subsidiaries. It applies only to decrees "hereafter" entered, and it was necessary to introduce a Senate resolution (Senator Gore, Oklahoma, September 28) in order to have the commission supervise the manner in which the Standard Oil subsidiaries are carrying out the decree in that case. Finally, the legal work required provides that where the attorney general brings suit under the anti-trust act against any corporation the court may, upon completion of testimony, if relief is granted,

[32] Waltham Watch vs. U. S. Watch Co. (173 Mass., 85).
[33] Wyman, *Control of the Market.*
[34] Sec. 6, paragraph e.
[35] Sec. 6, paragraph c.

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send the case to the commission as a master in chancery, to ascertain and report an appropriate decree.[36]

This briefly outlines the development of the law up to the cases calling the commission into existence. It will be interesting to note what has transpired since the trust cases of 1911. Primarily those cases indicated that the common law "rule of reason" was to be the determinant in saying whether combinations are in restraint. The court intimated that where a statute was enacted to give definiteness to common law principles existing at the time, common law standards should be adopted in interpreting the statute. And by common law, prior to 1890, only those combinations were objectionable which went to the point of monopoly in restraining trade. So we find in a recent Rhode Island case[37] the court declaring a combination not a monopoly and defining a monopoly as "any combination the tendency of which is to prevent competition in the broad and general sense and to control prices to the detriment of the public." Combinations for mutual advantage which do not amount to a monopoly, but leave the field of competition open to others are neither within the reason nor the operation of the rule. It is unreasonable restraint for manufacturers and dealers in patented goods, even though they own the patents, to combine and destroy competition.[38]

In a shoe machinery case the court held that manufacturers owning patents to machines required in the manufacture of different parts of a certain commodity may combine without violating the law.[39]

On the other hand, it has been held an unreasonable restraint to purchase patents held by a company, then buy up the majority stock of that company, pigeon-hole the patents and reduce the company to idleness.[40] And the salient feature of the Addy-

[36] Sec. 7.

[37] State vs. Eastern Coal Co. (29 R. I., 254) citing Oakdale Mfg. Co. vs. Garst (18 R. I., 484).

[38] U. S. vs. Patterson (205 Fed. 292).

[39] U. S. vs. Winslow (227 U. S., 202).

[40] Strout vs. U. Shoe Machinery Co. (202 Fed. 602).

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stone Pipe case was again held to be unreasonable restraint in an Iowa case,[41] where an association of farmers agreed not to sell outside of the association without forfeiting to the association five cents per 100 weight for all grain so sold.

The principal cases that have been in the United States courts since the 1911 decrees are the Union Pacific merger case[42] and the International Harvester case.[43] The railroad case does not involve the subject matter of the trade commission, but it is interesting to note that in both cases no new expressions of opinion were recorded. And yet the Union Pacific decision is peculiarly instructive by way of restating what the law has been, for the court goes to great length to show that previous decisions construing the anti-trust act were harmonious and consistent with one another. The case differed from the earlier Northern Securities case[44] in that, in the earlier case, the control through a holding company device was condemned, whereas in this case the court points out that the direct holding by one company of the stock of a potential competitor is equally bad. And it makes no difference, apparently, that less than a majority of the stock is held, for in this instance Union Pacific owned only 46 per cent of the Southern Pacific stock, which the court held to be control. This is interesting as a measure of monopoly.

The Harvester case, which is the latest United States case, held that even though a corporation was singularly free from all the evils against which the law was directed, if it tended to destroy competition and establish monopoly it was in violation of the second section of the anti-trust act. And this was so even though, as in this case, no fault was found with the methods of doing business and there was "an absence . . . of all the elements of undue injury to the public and undue restraint of trade." This case is very interesting as it applies to the work of the new commission, for its chief concern is restraint of trade by those two methods—unfair competition and undue combination.

[41] Reeves vs. Decorah Farmers' Coöperative Society (140 NW, 844).
[42] U. S. vs. Union Pacific Rd. (226 U. S., 306).
[43] U. S. vs. Int. Harvester Co. (214 Fed. 987).
[44] (193 U. S., 197.)

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Finally a New Jersey court decided last month[45] that a company cannot be said to have established a monopoly in any given community when other companies still continue to do business there, and in fact increase the total volume of business done in the commodity specified after the acts complained of (price cutting) had been done.

So that the cases since the oil and tobacco decisions of 1911 have established nothing that was not settled by the cases leading up to the creation of the commission. All that has been said on trade and commerce, the courts have been saying for many years. The commission, therefore, comes on to this field of combat with the "rules of the game" fairly well defined, and with the last court of the land having intimated clearly enough three things—just what are unfair methods of competition, just what is restraint of trade and just what is monopoly. To this extent, at least, it should not be difficult for the new board to coöperate with the business interests of the country, suggesting and recommending, and thereby reducing to a minimum the likelihood of disturbing suits for dissolution, which later can hardly be contemplated with equanimity in the existing delicate situation of commerce and finance.

[45] New Jersey Court Common Pleas, September 21, 1914.

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SUB-COMMITTEES OF CONGRESS[1]

BURTON L. FRENCH

U. S. House of Representatives

Much has been written of the mechanics of legislation in the Senate and the House of Representatives, and of the work performed by the committees of the Senate and the House. Little attention, however, has been paid to the sub-committees of Congress notwithstanding the fact that sub-committees perform a highly important function in legislation.

The Senate and the House are both such large bodies that it is imperative that the work of the bodies be handled initially through numerous committees. In the Senate there are seventy-four standing committees. In the House there are fifty-eight. The very reasons that make it advisable that committees be appointed at all in the Senate and in the House, make it desirable in certain cases that the work of the committees be even further sub-divided as occasion may warrant. When the work assigned to a standing committee of Senate or House is of a definite character that admits of practically no division, or when the committee itself of either body is small and appointed to have immediate consideration of a particular subject, the ordinary procedure is for the full committee to handle its work, without attempting to call upon members of the committee to act as a sub-committee, with the exception of sub-committee work in performance of a perfunctory duty, or, in the preparation, for instance, of a report where one member can prepare it far more expeditiously than could three members, five members, or the full committee.

Sub-committees play a far more important part in the House than in the Senate. This is true for several reasons. There

[1] This paper was written prior to the adjournment of the 63d Congress.

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are more committees in the Senate than in the House and consequently there is a greater classification of work, in other words, committees frequently take the place of sub-committees. The House committees are usually larger in number and consequently more unwieldy. The House is a far larger body and pays more attention to its committee work than does the Senate, the Senate "whipping out" on the floor of the Senate much that on the House side is done within the committees. Finally on account of the Constitution in the case of bills for raising revenue, and because of long custom in the case of all the supply bills, the House takes the initiative and works out the bills before the Senate gives its consideration to the general subjects. Yet the Senate committees in part work through sub-committees and for the same reason that the most important committees of the House have long followed this practice.

There is no general authorization for sub-committees in the rules of either the Senate or the House, and both branches of Congress assume that each committee will exercise its best judgment in devising ways and means of becoming best informed on the matters referred for report.

When it is recalled that in a single Congress as many as 30,000 bills and resolutions have been introduced in the House and 10,000 in the Senate (61st Congress, House 33,310, Senate 10,906; 62nd Congress, House 29,278, Senate 8,589), it can well be understood that the only way reasonable and intelligent progress can be made is by apportioning these bills for consideration among committees, and in committees that have to do with hundreds, and even thousands of bills, the only way that progress can be made is through the instrumentality of sub-committees.

Committees as a rule appoint sub-committees with relation to the character of the work. The sub-committees of certain committees of the House and Senate are definite and permanent, serving through an entire Congress. In other cases, sub-committees are select and appointed merely for a particular service.

The sub-committees of the committees of the Senate and the House may be classified as follows:

First. Permanent.

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Second. Select (or special):

a. For general committee work.

b. For particular investigations, etc.

c. For preparing report of committee and minor detail work.

Third. Political:

a. Definitely designated by the chairman of the committee.

b. Informally called together by the chairman of the committee.

The size of the permanent sub-committees must be determined by the work in hand, but usually such sub-committees are made up of from three to five members each, though sometimes, and especially for conducting hearings, larger sub-committees are appointed. The war claims committee finds it convenient to have sub-committees of one member each as a rule, and very commonly a sub-committee of one is appointed by the other committees to perform a piece of detail work.

Committees that have permanent sub-committees are not estopped from appointing select sub-committees to handle special work, and this they frequently do.

Probably in this connection it should be mentioned that upon the floor of the Senate and the House, the chief responsibility in sustaining the action of the committee, in important matters, usually rests upon the committee chairman and the members of the sub-committee whose advice has been followed in drafting or reporting the legislation. This is especially true of supply and claims bills, and upon bills that have their origin within the committee.

PERMANENT SUB-COMMITTEES

It sometimes happens that the work of a committee of the House or Senate is so constant from year to year along particular lines and can be so readily sub-divided into divisions that will hold good through session after session, that definite sub-committees of permanent character may be named at the beginning of each Congress, and in this manner make it possible for at least a few members of the committee to become specialists upon a particular line of work.

Thus for instance the committee on merchant marine and

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fisheries readily divides its work among four sub-committees under the headings, sub-committees on navigation laws, on registers, on fish and fish hatcheries, on miscellaneous. And the committee on judiciary divides its work readily among three sub-committees having to do with constitutional questions; revision of laws; court procedure, judges, etc. These are merely illustrations.

The committees whose work is of such type that sub-committees of permanent character can be appointed upon the basis of a formal classification of the work, are the following: In the Senate—commerce; corporations organized in the District of Columbia; District of Columbia; pensions; post offices and post roads; appropriations; naval affairs. In the House—appropriations; judiciary; banking and currency; interstate and foreign commerce; merchant marine and fisheries; military affairs; naval affairs; post offices and post roads; public buildings and grounds; invalid pensions; pensions; war claims; District of Columbia; accounts.

Some committees from the character of their work find it impossible to make any reasonable sub-division of work with relation to its character, but on the other hand find the work so voluminous that numerous sub-committees must be appointed in order to advise the full committee, and the work of the sub-committees is apportioned to them by the chairman of the committee, the work of each being quite similar. Chief of committees of this character are pensions, in Senate and House, and in the House, invalid pensions, claims, and war claims.

In certain of these committees there is a type of legislation of general character that may be considered by a standing sub-committee that has a function different from the rest of the standing sub-committees, as for instance in war claims where there are two distinct sub-committees that have to do with general legislation, and the reference of bills to the Court of Claims, in addition to the numerous sub-committees that have consideration of the claims themselves. Again the latter type of work may be handled by select sub-committees.

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COMMITTEES WITH SELECT SUB-COMMITTEES

Some committees have no permanent sub-committees, but operate through the appointment of select sub-committees.

The reason why these committees find it a great advantage to handle their work through select rather than standing sub-committees, usually lies in the character of the work itself. A committee to which from Congress to Congress are referred bills of similar character that can be grouped readily, or a committee that has the responsibility of shaping one of the great supply bills, would not usually undertake its work through select sub-committees, but would prefer sub-committees of permanent character. On the other hand, a committee that has the consideration of bills touching so wide a variety of subjects as to admit of no reasonably distinct classification, would prefer to appoint select sub-committees as occasion would demand.

A sub-committee of the committee on appropriations, for instance, does not conclude its labors on a subject when a particular bill shall have been concluded, but the work is of such character that with the completion of the work on one bill there must follow as successive years follow each other, the same character of work to meet the conditions in the succeeding years. With a committee like public lands, the question is different. A bill that a sub-committee may report to the full committee and which may become a law may remain on the statute books without even the necessity of modification through many years, and perhaps no similar bill will need to be enacted. In other words, the work of such committees cannot well be catalogued or classified in brief space. Every bill that the committee is called upon to consider possesses individual characteristics that prevent it from being placed in the catagory with possibly any other bill before the committee. Work of this character cannot be assigned to permanent sub-committees, but select sub-committees are appointed to handle the particular questions as they arise.

Sub-committees are sometimes appointed to do a special work for the full committee, such as to make investigations. I recall that in the 62nd Congress in considering legislation, the com-

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mittee on public buildings and grounds appointed sub-committees of five members each to make a personal examination of all the buildings in the District of Columbia owned or leased by the government and in which any considerable number of employees were assembled, to determine the adequacy of fire protection and sanitation.

The committees usually having select sub-committees are:

In the Senate: agriculture and forestry; banking and currency; coast and insular survey; education and labor; finance; foreign relations; immigration; Indian affairs; interstate commerce; judiciary; library; military affairs; mines and mining; patents; Philippines; privileges and elections; fisheries; rules; territories; claims; public lands.

In the House: ways and means; rivers and harbors; agriculture; foreign affairs; public lands; Indian affairs; territories; railways and canals; mines and mining; labor; claims; revision of the laws; election of president, vice-president, and representatives in Congress; irrigation of arid lands; immigration and naturalization; rules; census; library; roads; industrial arts and expositions.

COMMITTEES THAT USUALLY HAVE NO SUB-COMMITTEES

Another class of committees usually have no sub-committees other than sub-committees for the performance of a detailed piece of work. These are committees charged with a particular responsibility that cannot be divided readily, or with matters to the consideration of which it is advisable the committee give its united attention. The membership of these committees frequently is small in number, made up of from two to seven members, though sometimes larger committees are appointed. Committees of this class are:

In the Senate: additional accommodations for library of Congress; census; civil service and retrenchment; coast defenses; conservation of national resources; expenditures in the departments of agriculture, commerce, labor, interior, navy, justice, post office, state, treasury, and war; five civilized tribes of Indians; forest reservations and protection of game; geological sur-

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vey; Indian depredations; Canadian relations; examine the several branches of the civil service; investigate trespassers upon Indian lands; manufactures; national banks; Mississippi river and its tributaries; industrial expositions; interoceanic canals; irrigation and reclamation of arid lands; Pacific islands and Porto Rico; Pacific railroads; printing; private land claims; public buildings and grounds; public health and national quarantine; railroads; revolutionary claims; standards, weights and measures; transportation routes to the seaboard; transportation and sale of meat products; University of the United States; woman suffrage; audit and control of the contingent expenses of the Senate; engrossed bills; enrolled bills; revision of the laws of the United States (joint); disposition of useless paper in the executive departments.

In the House: elections, No. 1, No. 2, and No. 3; coinage, weights and measures; insular affairs; education; patents; reform in the civil service; alcoholic liquor traffic; expenditures in departments of agriculture, commerce, interior, justice, labor, navy, post office, state, treasury, and war; mileage; printing; enrolled bills; disposition of useless executive papers; expenditures on public buildings.

It will be noted that there are three committees on elections in the House. These committees are of equal rank, are made up of small membership—seven at present—and act as courts that hear and report upon House contested election cases. The importance of having cases heard and decisions rendered as promptly as possible, makes it advisable that the work be handled by several committees rather than by one. It should probably be added that these committees do not consider legislative matters, as, for instance, bills for regulating elections are considered by the committee on election of president, vice-president and representatives in Congress.

SUB-COMMITTEES FOR DETAIL WORK

All of the committees of the Senate and the House whether they have permanent or select sub-committees, or no sub-committees at all for the general consideration of committee work,

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may have occasion at times to appoint formally or informally a member or members of the committee to perform the function of a sub-committee.

The person or persons designated by the chairman of the committee to perfect the language of a bill after it has been agreed upon in substance must be regarded as a sub-committee, so, also, the person delegated to confer with the representative of a department on some feature of a measure that is being considered, or to advise informally with some member or members of the House or Senate with whom it may be advisable to consult, or to make special inquiry into questions in dispute, etc.

Again a committee, with or without referring a bill to a sub-committee, decides to report favorably the passage of the measure. The chairman of the committee either reports the bill for the committee or designates a member of the committee to make the report. The person performing this function is necessarily a sub-committee and in some instances a very responsible duty is that which is imposed upon the person designated to make the report for the committee.

It may readily happen that the entire membership of the committee may be favorable to a certain measure but may not be in harmony in the preparation of a report. They may arrive at the same ends through different methods of reasoning. The person designated to make the report has conferred upon him the responsibility as a real sub-committee to make such a report as will set forth to the House clearly the reasons that caused the committee to take the particular action that was taken.

With this general statement, I shall outline in more detail the work of certain sub-committees of the House, that may be taken as typical of the sub-committee work of similar Senate and House committees.

APPROPRIATIONS COMMITTEE

The committee on appropriations holds definitely to the policy of considering legislation through permanent sub-committees. It is true that occasionally select sub-committees are appointed, as, for instance, in the present Congress, a select sub-committee

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was appointed to consider the question of surety bonds, but the ordinary work of the appropriations committee is handled through sub-committees of from five to seven members each, non-partisan in character and designated at the beginning of the first session to serve through the entire Congress.

At present there are seven permanent sub-committees that have respectively the first consideration of the following bills: sundry civil, pensions, legislative, District of Columbia, fortifications, deficiencies, and permanent appropriations.

The work of the appropriations committee is of tremendous importance, for the country is interested, not only in the question of economy from the standpoint of amount of money expended, but also in the question of wisdom in expenditure.

When I point out that in the present Congress the sub-committee that prepared the tentative draft of the sundry civil bill held hearings from February 28, 1914, to May 9 following, and besides that consumed two or three weeks of additional time in preparing the bill, and when also the sub-committee on the District of Columbia held hearings for about two months touching the budget of the District of Columbia, it may readily appear how great is the responsibility that Congress has placed upon its appropriations committee.

Frequently it happens that hearings will be going on before several sub-committees at the same time. It would be a physical impossibility for the members of the appropriations committee to sit as a committee at all hearings; to prepare all bills in detail, from the beginning; and to do the work within the period of the session of Congress, in a manner that would approach the manner in which it is handled under the present system. It is the duty of each sub-committee having in charge the preparation of an appropriation bill to make itself thoroughly informed upon every detail and item connected with the appropriation, and to be able to sustain its position before the full committee.

After the sub-committee has performed its labor and made its report to the full committee, the members of the full committee usually approve in the main the work of the sub-com-

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mittee made up of what might be called "specialists" upon the particular appropriation measure.

Unquestionably the members of the full committee through the sub-committee system are able to have a more comprehensive and intelligent conception of the appropriation bills, severally as well as collectively, than they could have if they attempted by some means to sit at all times as one body, conduct all hearings, and prepare and shape the items of all bills.

I have suggested that the very nature of the work demanded of the appropriations committee makes it advisable that definite permanent sub-committees be appointed rather than select sub-committees in the preparation of the various bills. Many of the items in the appropriation bills repeat themselves from year to year. Many of them are modified by being increased or decreased. A member of the sub-committee on appropriations whose work carries him through successive Congresses upon the same sub-committee becomes an expert in his particular field and with one or more hold-over members from preceding Congresses on every sub-committee, the members newly assigned are greatly assisted in their work of obtaining a grasp on the budget.

Most of the other appropriating committees labor in much the same manner as does the general appropriation committee, to wit —the committees on military affairs, naval affairs, post offices and post roads, and agriculture, in the House; and the committees on appropriations, agriculture and forestry, naval affairs, military affairs and commerce, in the Senate.

INTERSTATE AND FOREIGN COMMERCE

One of the greatest committees of the Congress is the committee on interstate and foreign commerce. Within the last twenty-five years this committee has risen to the premiership of all committees, in my judgment. It considers bills that have to do with the regulation of commerce, pure food and cold storage legislation, public health, dams and bridges across navigable streams, safety on common carriers, frauds in commodities in interstate commerce, and numerous other questions that may

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be suggested in a general way by the name that the committee bears.

Here again the work of the committee can be divided fairly well and members of the committee may become specialists in particular fields if appointed upon sub-committees that will have for consideration all legislation upon a given subject.

With this in view, and with the idea of maintaining an organization within the committee that would lend itself to the most comprehensive consideration of all bills referred to it, the policy has been followed in the 62nd and 63rd Congresses of maintaining definite standing sub-committees. In the present Congress there are ten such sub-committees and in addition to these, as special occasions arise, select sub-committees may be appointed, as for instance recently a select sub-committee was appointed for the considerations of the trade commission bill.

The permanent sub-committees are made up of from five to nine members and have to do with such distinct classes of legislation as bills for the regulation of commerce upon the one hand and pure food measures upon the other.

Hearings are held either by the full committee or by the sub-committees, but each sub-committee is expected to be well informed upon all matters which it is called upon to report to the full committee and as in other committees to which I shall refer, while the work of the sub-committees in the preparation of legislation is for the most part approved by the full committee, bills reported from the sub-committees are modified by the full committee, and, as they finally appear, represent the wishes of those members of the full committee reporting the same, guided as those wishes may be by the influence and advice of the specialists—the sub-committee that has given extensive consideration to the measure.

PUBLIC BUILDINGS AND GROUNDS

The committee on public buildings and grounds furnishes another illustration of the use of the sub-committee. I am not defending the so-called "Pork Barrel" system of locating public buildings, and, in fact, I condemn it and trust that at some time

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we shall devise a system for the locating of public buildings that will have fair regard to population, public service, economy of public buildings in comparison with the renting of privately owned quarters, etc. So long, however, as the present policy of locating public buildings shall prevail, the Congress must depend upon its House and Senate committees, and in turn each committee must depend upon its sub-committees.

While the committee of the House on public buildings and grounds has occasional work throughout the Congress, its chief responsibility is that of preparing the omnibus public buildings and grounds bill which Congress passes from time to time, at intervals of from two to four years, as a rule.

Authorization for public buildings and the purchase of sites not being imperative, as is the continuation of the postal service, for instance, the policy is followed of estimating in advance the amount of money that may reasonably be set apart for this work. At a time when revenues are rapidly falling off, the postal service may not wait, but the construction of public buildings may be postponed. On the other hand, were the revenues large and the treasury full, the time would be propitious for a public buildings bill. Whether the bill shall be passed at all is not determined by the committee, but rather by the committee in conjunction with the leaders of the administration party in Congress and the administration. That is, while the Congress is not asked to pass such a bill nor advised not to do so formally, it is probable that no omnibus public buildings bill would be passed unless the passage of the same were agreeable to the administration. Even the approximate amount to be included in the public buildings bill is determined in this way. This being the case, individual public buildings bills are not passed excepting in cases of emergency, as the destruction of a public building by earthquake or fire and there is necessity for its being replaced.

Assuming, however, that the time is right for the passage of a public buildings bill, the committee on public buildings and grounds of the House occupies a very responsible position and has to do with the authorization of appropriations of from twenty

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to thirty millions of dollars or more. The committee in one or more meetings determines the general terms of the bill; that is, a resolution is passed that will fix quite definitely the approximate grand total of authorization, the size of the city below which a building or site will not be considered, the approximate amounts that may be authorized for buildings or sites in cities of certain sizes, etc. Permanent sub-committees, if not already named, are then appointed of about five members each and to each sub-committee is referred a group of states in such a way that all of the sub-committees have approximately the same amount of work to cover.

It is the duty of each sub-committee to consider the bills introduced by the members of Congress from such states as may be referred to it, and to determine the items from the many bills that shall be included in the omnibus bill. Unusual cases are passed over to be considered by the full committee. The work of the sub-committees may extend over a period of many weeks, during which time hearings have been held where members have requested hearings, data has been assembled, and possibly 10 per cent of the amounts included in the individual bills referred to the committee, has been finally included, in some way, in a tentative draft of bill to be recommended favorably to the full committee as worthy of being included in the omnibus measure.

In due time the full committee assembles to consider the reports of all the sub-committees. One sub-committee will be found to have been very generous; another technical and conservative. Much dissatisfaction would be incurred in the Congress and throughout the country if these differences should be permitted to be incorporated in the general bill, and the full committee spends days of its time in harmonizing the various sub-committee sections. The full committee determines the larger items and special cases, but the great bill itself in the rough is the work of the sub-committees—the final bill being the work of the full committee.

The last public buildings bill that was reported to the House, (62nd Congress) carried authorization to the extent of a little more than $25,500,000, and while this amount is large the great

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work of "sorting out" may be suggested when I say that these items were selected from bills whose aggregate amounts had called for authorization of more than $300,000,000.

Whether or not the bill will be just and claim a reasonable support on the floor of the House, notwithstanding the fact that bills of members have been pared down and pushed aside to the extent of 90 per cent and more, depends upon the fairness and equity that runs through the bill and this largely depends upon the fidelity of the sub-committees in performing their responsible work. The sub-committees undoubtedly perform their work in such a way as to arrive at far more reasonable results than could be attained were the bill in its entirety to be prepared by the full committee.

RIVERS AND HARBORS

The committee on rivers and harbors while having in charge a so-called "Pork Barrel" measure, usually performs its work as a full committee, though select committees may be designated as occasion warrants. The ground work of the action to be taken by this committee is so fairly well outlined by reports of the Bureau of Engineers of the War Department, and by projects already begun that there is not the imperative necessity for sub-committee work that exists in many other committees.

PENSIONS AND INVALID PENSIONS

The work of the invalid pensions and pensions committees is handled through permanent sub-committees, each sub-committee being made up of two or three members. Select sub-committees may be appointed to consider special measures, and in the committee on pensions of the House there exists a permanent sub-committee on Senate bills and general legislation, made up of three members.

In both committees general policies in the way of rules are carefully worked out at the beginning of each Congress for the government of the committees in considering private bills. These rules are worked out without respect to individual cases, and the

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chief work of the sub-committees consists in applying the general rules formulated by the committee for the government of all cases, to the particular bills presented for consideration.[2]

For the convenience of the sub-committees all the bills from a certain group of states will be referred to sub-committee No. 1, all from another group of states to sub-committee No. 2, etc.

Of course, if upon the assembling of the full committee it should appear that one sub-committee were acting upon a different understanding than the other sub-committees of the general policies agreed upon for the government of the committee, the bills from such sub-committee would need to be adjusted to conform to such standard. As a rule, however, the sub-committees speedily adjust themselves to the policy formulated for the government of the committee and regardless of personal attitude in the matter of policy, report the individual bills or items upon the basis of the known wish of the full committee.

CLAIMS AND WAR CLAIMS COMMITTEES

The committee on claims and war claims have a responsibility somewhat similar to the responsibility of the committees on pensions and invalid pensions, but with this distinction. The committees on pensions and invalid pensions are called upon to consider for the most part the pension rating of persons claiming recognition by special act and consequently the claims involve in each individual case a comparatively small amount. On the other hand, the claims and war claims committees are called upon to consider bills involving an expenditure by the government in the settlement of claims of from a few dollars to hundreds of thousands and even millions of dollars.

A few general rules touching evidence, etc., may be adopted by the committee for its government, but in addition to this,

[2] The general rules define the scope of what the committee will undertake. For instance, no bill will be considered where claimant has not already exhausted all rights of application for pension under the general law, or where claimant has been pensioned by special act of Congress, or where evidence submitted is not of a definite character, etc. The full committee with rare exception sets aside the rules thus made.

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each particular claim must rest upon its own merits and receives the consideration from the individual sub-committees that a court would accord the claim, were it possible for suit to be brought for the amount in issue.

The sub-committees endeavor to do justice, to apply the laws of evidence and liability that would be applied by a court, and oftentimes to award or fix damages in the amount that would probably be fixed were the case one involving the liabilities of a citizen toward another citizen.

In the claims committee, the sub-committees are made up of three members each; in the war claims committee, the sub-committees are made up of one member each with the exception of two standing sub-committees—the first made up of the two ranking members in addition to the chairman, and having to do with general legislation coming before the committee, and the other made up of three, and having to do with the reference of cases to the Court of Claims. In both committees, the work of the sub-committees constitutes expert service for the benefit of the full committee.

It often happens in connection with the work of sub-committees from such committees as pensions, invalid pensions, claims, and war claims, that one member of the sub-committee will be especially charged with the responsibility of advising the sub-committee on the merits of the proposition, and occupies a relation to the sub-committee similar to that which the sub-committee in turn occupies to the full committee.

COMMITTEE ON PUBLIC LANDS

The committee on public lands not only is one of the most responsible committees of the House, but may be taken, in the operation of its sub-committee work, as typical of a large number of committees of the Senate and the House, such as mines and mining; irrigation of arid lands; coinage, weights and measures; labor, immigration and naturalization; and Indian affairs.

The work of this committee differs for instance from the work of the appropriations committee and can not be divided in a manner that will be satisfactory. On the one hand, measures

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can hardly be grouped together with respect to states, and so referred to sub-committees, for immediately there would arise conflicts of interest among states where similar conditions prevail. The policy of apportioning work according to states, while it works well with the committee on public buildings and grounds, would work outrageously with the committee on public lands.

One sub-committee might be appointed to consider all leasing bills; another all homestead measures, etc.; but the difficulty that would arise here would be the overlapping of responsibility, and interference upon the part of one sub-committee with the work referred to another sub-committee. There seems to be no reasonable way of classifying the work of the public lands committee so that definite units may be referred to definite sub-committees. In view of this, the practice has been followed for many years of considering all bills either originally within the full committee or in the pleasure of the committee, by reference to a select sub-committee of from three to five members. Very frequently several bills upon a particular subject are referred to one sub-committee especially appointed for the consideration of the bills. This is the nearest approach in the public land committee that there is to the idea of permanent sub-committee work.

COMMITTEE ON INDIAN AFFAIRS

The committee on Indian affairs does its initial work through sub-committees. The committee has no standing sub-committees but generally speaking, declines to consider any bill of particular importance that has not been considered and reported upon by a select sub-committee, of three members as a rule.

These sub-committees hold hearings. Sometimes the hearings are extensive and within the present Congress one sub-committee has held hearings extending over a period of four months while another one has held hearings extending for more than a year.

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WAYS AND MEANS

The ways and means committee is the only committee of the House that adheres to the old policy that a committee that has charge of the framing of a bill should be in sympathy with the measure. Of course, the full committee is made up of members from different political parties, the controlling party in Congress retaining necessarily the majority, but for the purpose of preparing bills that must be regarded as of political character, the committee within itself follows the policy of appointing through its chairman sub-committees composed of members only of the majority party.

In the 63rd Congress, in the preparation of the Underwood tariff measure, there were seventeen sub-committees of from one to four members each, usually three, however, selected from the Democratic members of the committee.

Hearings had been held during December and January following the election of 1912 by the ways and means committee. At the conclusion of these hearings, sub-committees were, to the extent possible, selected at once and began their duties. Each sub-committee was given charge of some particular section of the revenue measure, i. e., Schedule A, Schedule B, the income feature, free list, etc.

It was the duty of each sub-committee to prepare a tentative draft of the particular section of the bill that had been referred to it, and the sub-committees were engaged in this task from January, 1913, till in April following, though probably the heaviest part of the work in each instance was performed during a period of two weeks.

After each sub-committee had prepared tentatively so much of the measure as had been entrusted to it, the draft was considered by what must be regarded as a sub-committee made up of the entire majority membership of the committee, carrying out the idea still that the friends of a measure of political character should prepare it, since the administration represented by the majority members must be responsible.

The chairmen of the respective sub-committees were necessar-

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ily in close touch and were advised of the attitude and views of the majority members of the committee and in this way were able to assist in advising the respective sub-committees and shaping the sections of the bill entrusted to such sub-committees, not only in line with the general desires of the full committee membership, but also so that as nearly as possible the sections would be harmonious with relation to each other.

However, notwithstanding the tentative drafting of the various sections in this manner, the larger "sub-committee" made up of the majority members of the ways and means committee, considered every tentative draft as each was reported by a sub-committee, and, while the sub-committee draft for the most part was approved, there were many instances in which modifications were made after full deliberation, and other instances in which parts of sections that had been tentatively passed over were modified in order that they might articulate with the schedules in some other section. For instance, a modification of the chemical schedule might require a corresponding modification of such a remote schedule as Schedule K (wool).

The criticism has been made that legislation through sub-committees is faulty because the entire membership of the committee is not technically advised on all the features of the bill reported. It is my own judgment from an observation that has covered nearly ten years, that in a measure such as a tariff bill, the full committee finds itself much better informed after the painstaking work and the reports have been made by the sub-committees, than if the full committee itself were to undertake in detail the first consideration of every schedule.

The full committee and the sub-committees have at all times the benefit of expert advice from some officer or officers detailed from the treasury department. Not only this, but usually there is called to the clerkship of the committee a capable expert in statistical matters.

After the sub-committees have made their reports and these reports have been considered and the bill finally drafted by that which I said must be regarded as a sub-committee (the majority members), the completed draft of the bill is printed and "con-

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sidered" by the entire committee made up of the members of the various political parties.

At this point, the rule that has controlled the committee in the shaping of the bill, that the bill should be prepared by its friends, theoretically ceases to operate, for nominally, at least, a committee made up of members of various political parties pass upon the measure itself, though it would be a singular circumstance if the measure as so drafted were not reported by the majority members of the committee and either an adverse report or a substitute bill offered by members of the minority.

Aside from the work of the ways and means committee in the preparation of measures that are regarded as political, sub-committees of the ways and means committee are non-political in character, and for the most part are made up of two members of the majority party and one of the minority. All sub-committees of the ways and means committee, either political in character or non-political, are select sub-committees.

POLITICAL COMMITTEES

The only committee whose sub-committees for important measures are generally appointed along the lines of party allegiance is the ways and means committee. The rules committee, which is practically a political committee (using the word in a perfectly worthy sense), and has much to do in aiding the Congress to follow a definite legislative program, has no permanent sub-committee though it may appoint a select committee for some specific purpose as it does at the beginning of each Congress in considering the rules. Being, as I said, a political committee, it is customary for the majority members of the committee to meet informally without reference to the minority members and discuss and agree upon a course of action to be taken when the full committee may be convened. Upon the assembling of the full committee the course of action is proposed and by motion or resolution brought before the committee and disposed of as though it had had its inception in the full committee meeting. Technically there is no sub-committee, yet as a matter of fact the members of the majority party constitute

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themselves an informal sub-committee to determine upon the course of action that the committee shall pursue, the minority members of the committee being left to elect whether they will concur in or oppose the views of the majority.

Probably it should be said that this same policy is applied in other committees where it is important that the party in power agree upon a measure for which the administration stands and that it is expected or known will be opposed by the minority party. The members of a committee of the party in power oftentimes informally arrive in this manner at a conclusion that controls the committee, and at the same time avoid disclosing the exact conflict of opinion within their own ranks. No sub-committee as such has been appointed; no stated meeting of the majority members of the committee has been held; the work has been entirely informal, but none the less it has been effective.

GENERAL OBSERVATIONS

The responsibility of the committees of the Senate and the House to their respective bodies needs to be considered in this paper only as the responsibility involves the sub-committees. In the first place the number of bills presented in any Congress for the passage of which there is an unquestioned sentiment, is exceedingly few. In the present Congress probably less than a score have been introduced, including such bills as the tariff, currency, trade commission, and the various supply measures. It follows then that the pronounced sentiment behind each of the twenty to thirty thousand bills pending in recent Congresses is limited to possibly the authors of the measures and perhaps an indefinite number of other members to whose attention the measures have been called. I am not overstating the case when I say that I am confident that no member of Senate or House could name from memory one-half of one per cent of all the bills that have been presented to the 63rd Congress.

As a rule the committees and through them the sub-committees endeavor to reflect the opinion of their respective bodies upon the comparatively few measures where there is a concensus of

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opinion known, so far as can be done consistent with public duty. On the vast mass of bills the committees are free to exercise a more individual discretion.

From this it will appear that while the Senate and the House have control over the committees, and have power to discharge a committee from further consideration of any measure already referred, or even to pass a bill without referring it to a committee at all, such power is rarely exercised.

Indeed the confidence of the Senate and the House in the respective committees is such that on measures where there is pronounced sentiment, the final judgment of the committees, though at variance with the judgment of the body is apt to be approved in the main. This is especially true in the House where far more responsibility is placed upon the committees than in the Senate, the Senate debating at length on the floor matters that are determined in the committees of the House.

The committees in turn, while possessing full authority over the sub-committees, very generally follow the advice and counsel of the members who have been specially charged with a committee duty.

It is sometimes asserted that sub-committees are used to avoid publicity of committee proceedings. In the case of the sub-committees that I have referred to as political, whether definitely appointed or informally called together, undoubtedly this is true. It is felt that publicity should not be given until the work of the sub-committees is completed. But in the appointment of non-political sub-committees there is rarely any attempt to avoid publicity though probably there is naturally less of publicity to the proceedings of the sub-committees than to the full committee proceedings. The full committees have what is oddly, yet commonly called "executive" sessions, and so do sub-committees, at which times the members deliberate alone, and so there could be little reason for appointing sub-committees to avoid publicity, except in the cases of sub-committees that are of partisan or political character.

Sub-committees are commonly authorized to hold hearings and frequently the very ease by which a quorum of the mem-

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bers of a sub-committee may be assembled, in comparison with the difficulty of assembling a quorum of a full committee, is the reason for the sub-committee's appointment. The members of Congress have many duties and the sub-committee is often the only reasonable means of having a hearing granted to those who have asked for it, and who have journeyed maybe from California or Alaska in order to be present and to present their views upon an important subject.

Generally speaking when sub-committees are made up of so large a number as nine members, it is contemplated that hearings will be held and while the full committee, probably twice as large, can not be present, as many of their number are delegated as will not make it embarrassing to the sub-committee to hold a quorum. For ordinary committee work a smaller sub-committee is most desirable.

When one reflects on the vast number of bills introduced into every Congress one must be impressed with the idea that the problem of sorting out the ones that should pass is most difficult. In the present Congress one member introduced seven hundred private pension bills. Another introduced public buildings bills upon a basis that were it applied to all districts as generously would call for an appropriation for this purpose alone of a sum greater than the entire annual expenses of the government. Other similar illustrations could be furnished of the bills Congress is asked to consider. The committees and the sub-committees have an important duty in sorting out from the mass of bills the really important and meritorious ones and "killing" the rest. This is a responsibility that must be definitely placed so long as the Congress shall continue to do work that involves tremendous detail.

Much may be said upon this question, both for and against the advisability of making committees and sub-committees the buffer upon legislative propositions. In the great long run, a party in power is responsible and must in greater or less degree meet the praise or the condemnation of the citizens of the country for passing or refusing to pass legislation.

If a party is clothed with responsibility, with the understand-

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ing that it shall not consider a certain type of legislation, it is hardly fair to the party that a very small minority that might be members of a committee should, by reporting a measure, raise an embarrassing question for the party in control. On the other hand a committee should not block the course of the Congress by deliberately holding back legislation.

It is quite impossible to point out specific instances under this head. To do so might even be to challenge the good faith of members of the Senate or the House, and possibly that which would appear to me as a reasonable deduction is as a matter of fact a conclusion that should not have been made. Undoubtedly there are times when sub-committees are appointed under conditions that make it possible for the statement, "The member will have a hard job getting by that sub-committee," to have real merit.

I recall that in one committee upon which I have served, a member of the House who was serving his first term came in and called the committee's attention to a bill that he had introduced pertaining to matters in his district that had been called to the attention of the Congress regularly for nearly 100 years. There was no possibility of passing the bill—no possibility in the first place of it being reported from the committee, for the older members of the committee were fairly familiar with it and were antagonistic, and no probability of it passing the Congress if reported by the committee.

It happened that at the time there were several members of the committee who were not much interested in their particular committee work or who were absent from Washington. I recall the efforts of the members of the committee to maintain sober faces as the chairman advised the advocate of the bill that he thought it would be best to give him a sub-committee and proceeded to name as members of the sub-committee five representatives who would be most unlikely ever to hold a meeting, much less give consideration to the question.

The new member of Congress thanked the committee as earnestly as though a real favor had been done him and after he retired, the door of the committee room had hardly closed when the

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members of the committee by their uproarious laughter assured the chairman that they saw through and approved of the little joke that he had played.

What I have said with regard to the sub-committees of the Congress has relation more to the present and to the last few years than to earlier periods, though in general it will hold good for a period of many years. The fact, however, that one committee is organized upon one basis during a given session is no guarantee that the same basis of organization will be made use of in succeeding sessions. For instance, the committee on interstate and foreign commerce in the present Congress has ten sub-committees, each of which has to do with fairly different work, yet during the time Hon. W. P. Hepburn was its chairman there was but one standing sub-committee, that on "Aid to Navigation," and when the committee was under the leadership of the present minority leader of the House, Hon. James R. Mann, there were no standing sub-committees, but, on the other hand, while select sub-committees were at times appointed, Mr. Mann held firmly to the conviction that the matters for the consideration of the committee could best be handled mainly through the deliberations of the committee's entire membership.

The whole question of the advisability of maintaining sub-committees is open to debate and there are those who would abolish all, or practically all, sub-committees and insist upon the committees of the Congress being the smallest units for the handling of the work.

In my judgment, while there may be measurable merit in this contention, there are committees of the Senate and of the House where it would be utterly impossible for senators and representatives to perform their duties in manner that would be creditable by paying first attention as members of the full committees to all matters, all hearings, and to the shaping in detail of all legislation coming before them.

The members of such committees must divide their work by referring it to sub-committees and then from time to time meet as members of full committees and consider the advice of the members of the sub-committees who have given the subjects their special attention.

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LEGISLATIVE NOTES AND REVIEWS

JOHN A. LAPP

Director of the Bureau of Legislative Information of Indiana

Some Phases of Injunction Legislation 1913-1914. Within recent years it has been found that, whatever objections may be urged against the indiscriminate use of the injunction as a means of postponing or preventing an obviously beneficial and natural sequence, it can be turned by statutory enactment into an instrument for public good. It has been proved in the statutory law that the injunction is a two-edged sword which may be employed as well by the States to prevent the violation of useful laws as it previously was employed by the beneficiaries of a laissez faire policy to prevent their enforcement.

Likewise, the use of the injunction as a means of staying the operation of useful laws or restraining and curtailing the rights of certain classes, especially organized labor, has been greatly circumscribed and limited by statute. There is no doubt that the injunction has been, and will continue to be, where statutory limitations of its use are neglected, a very effective aid to employers and a very serious obstacle to workingmen in labor disputes.

Perhaps the abatement and injunction acts for which Iowa furnished the model as long ago as 1909 represent the first appeal to the injunction as a process for summary dealing with statutory violation that cannot be reached effectively in any other way. The public service commission law of California of 1911 and the public service commission acts of Missouri, Pennsylvania and West Virginia are examples of those acts which specifically clothe the regulatory body with power to proceed against law violators, actual or threatened, by means of the injunction. The use of the injunction to prevent the violation of the New York pure mattress law and a law relating to the conversion of military property to unlawful uses was authorized by the 1913 legislature. Another statute of the same session empowers the court having jurisdiction to enjoin an assignee from interfering with the assignor's property in general assignments. Still another act of the 1913 session of the New York legislature confers on certain per-

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sons and associations the right to maintain in the name of the State an action to enjoin a nuisance. In the same way, the injunction is now used to prevent the violation of housing acts in two States especially, Massachusetts and California.

Section 2 of the Iowa abatement and injunction act of 1909, in the main is typical of all the laws since enacted on that subject, especially the laws of Wisconsin, Utah, Oregon, Minnesota and Kansas. The provisions of the different States differ somewhat in detail but essentially they are the same.

The Iowa abatement and injunction act provides that: "Whenever a nuisance is kept, maintained or exists, as defined in this act, the county attorney or any citizen of the county may maintain an action in equity in the name of the State of Iowa upon the relation of such county attorney or citizen, to perpetually enjoin said nuisance, the person or persons conducting or maintaining the same, and the owner or agent of the building or ground upon which said nuisance exists."

The statute authorizes a temporary writ upon the presentation of a petition therefor and a reasonable showing of facts. Three days' notice in writing is given to the defendant and the issuance of the writ follows as a matter of course. Any violation of the injunction within the judicial district where it is issued is punishable as contempt of court.

No preliminary injunction or restraining order can issue without notice under the Oregon act but a hearing must be held within five days after notice to the defendant. Kansas, however, permits the injunction to be granted at the commencement of an action and no bond is required. In this State the punishment for contempt is a fine of not less than $100 or more than $500 and imprisonment in the county jail for not less than thirty days or more than six months at the discretion of the court.

The Missouri public utility commission act of 1913 contains three sections, each devoted to a different class of public utilities and conferring upon the commission the right to employ the mandamus or injunction to compel the public utility to do what it is by law failing or omitting to do or to prevent the public utility from doing anything contrary to or in violation of law or any order or decision of the commission. The Missouri act makes it the duty of the general counsel to the commission to begin an action for mandamus or injunction by a petition to the court alleging the violation complained of. The defendant has thirty days in which to answer, after which the court "shall immediately in-

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quire into the facts and circumstances in such manner as the court shall direct without other or formal pleadings, and without respect to any technical requirement." Parties other than the public utility in question may be joined as parties to the petition in order to make the order, judgment or writ of the commission effective.

Pennsylvania's public service commission act of 1913 contains the following provision: "Whenever the commission shall be of the opinion that any public service company is violating or is about to violate any provision of this act; or has done or is about to do any act, matter, or thing herein prohibited or declared to be unlawful; or has failed, omitted, neglected, or refused, or is about to fail, omit, neglect or refuse, to perform, any duty enjoined upon it by this act; or has failed, omitted, neglected, or refused or is about to fail, omit, neglect, or refuse, to obey any lawful requirement or final order made by the commission; or any final judgment, order, or decree made by the court of common pleas of Dauphin county, or by the supreme court—then, and in every such case, the commission may, by its counsel or assistant counsel, institute in the name of the commission, in the court of common pleas of Dauphin county, injunction, mandamus, or other appropriate legal proceedings, to restrain such violations of the provisions of this act, or of the orders of the commission, and to enforce obedience thereto; and the said court of common pleas is hereby clothed with exclusive jurisdiction throughout the commonwealth to hear and determine all such actions."

Three New York acts of 1913 employ the injunction for preventing the illegal manufacture or sale of mattresses, the unlawful conversion of military property, the unlawful use of the name of a military or naval organization and the unlawful interference with the assignor's estate in cases between debtors and creditors. In the first case, the commissioner of labor, who has charge of the enforcement of the pure mattress law, through the attorney general may sue for and obtain an injunction restraining any person from manufacturing or selling an article in violation of the law. In the second case, an injunction may issue upon notice to the defendant of not less than five days. In the third case, no period is fixed to limit the time after which an injunction may issue.

An amendment to the New York public health act of 1913 in relation to the suppression of certain nuisances no doubt follows the procedure of the abatement and injunction acts. It seems certain that the injunction is to become more popular as a means of restraining the violation of this class of legislation.

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Organized labor has led the fight to restrict the use of the injunction in disputes between capital and labor. A Kansas act of 1913 and a Massachusetts act of 1914 indicate that the opposition of organized labor is gaining some headway. Heretofore, the injunction has been employed to prevent labor boycotts and workingmen from going on a strike. Only the immediate and irreparable injury to property or the rights of the complainant justifies a temporary restraining order without notice under the Kansas and Massachusetts acts and then only when "the giving of notice of the application or the delay incident thereto would probably permit the doing of the act sought to be restrained before notice could be served or hearing had thereon." But every such order, according to the Kansas act, "shall be endorsed of record, shall define the injury and state why it is irreparable and why the order was granted without notice, and shall by its terms expire within such time after entry, not to exceed seven days, as the court or judge may fix, unless within the time so fixed the order is extended or renewed for like period, after notice to those previously served, if any, and for good cause shown, and the reasons for such extension shall be entered of record."

An amendment of 1913 to the Montana code of 1907 provides that: "An injunction cannot be granted in labor disputes under any other or different circumstances or conditions, than if the controversy were of another or different character, or between parties neither or none of whom were laborers or interested in labor questions."

While the New York housing law of 1913 applying to cities of the second class provides that "no preliminary injunction shall be granted against the health department or its officers except by the supreme court or a justice thereof after service of at least three days' notice, together with copies of the papers upon which the motion for such injunction shall be made," the California and Massachusetts housing acts of 1913 go much further and confer upon persons interested in the enforcement of the laws the right to employ the injunction to prevent law violation. Section 86 of the Massachusetts act confers upon equity courts, upon application of the city solicitor, building inspector or board of health, the right to "restrain the construction, alteration, repair, maintenance, use or occupation of a building or other structure in violation of the provisions of this act and to order its removal or abatement as a nuisance, and to compel compliance with any provision of this act." The California act confers essentially the same power upon the superior court.

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Under the Wisconsin railroad commission act of 1907, "no injunction shall issue suspending or staying any order of the commission, except upon application to the circuit court or presiding judge thereof, notice to the commission, and hearing." This provision has since been re-enacted and the original limitations amplified to considerable detail. The Indiana and Illinois public service commission acts of 1913 contain similar provisions. The provision of the Arizona act of 1912, restricting the right to use the injunction to set aside the order, regulations or decrees of its corporation commission, is perhaps the most sweeping of all. Section 2344 of the Revised Statutes of 1913 provides: "No order staying, restraining or suspending any order, rule, regulation, charge, or decree of the commission shall be made in any court of this State."

All this legislation indicates the present extremes to which lawmakers have gone to eliminate the most objectionable abuses of the injunction and at the same time, by the statute law, to reinvest the process with an important function in law enforcement. The statute law has been resorted to as a means of restricting its use in strictly class warfare and in those cases where the public is entitled to the presumption of constitutionality when an act of its legislatures or a judgment or decree of its legally constituted servants is attacked. The theory of the injunction as an extraordinary remedy can hardly be assailed with success, particularly when we recall its original function, viz.: "An injunction is a writ framed according to the circumstances of the case commanding an act which the court regards as essential to justice, or restraining an act which it esteems contrary to equity and good conscience."[1]

It is the abuses tolerated under this broad vestment of power to which the most serious objections are patent. When these abuses have been provided for, we may expect a considerable diminution in the unpopularity of the injunction, especially as it is more and more used to put teeth into beneficial laws.

CARL HENRY MOTE.

The State as a Lobbyist. The New York legislature of 1914 passed an act which creates a state commission for the purpose of promoting federal legislation on the subject of the alien insane. The law provides that the commission consist of three members and be appointed

[1] Jeremy, Eq. Jur. 307.

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by the governor. The commission was directed to meet within ten days and to organize by the election of a chairman and secretary. An appropriation of $2500 was made to pay the actual and necessary expenses of the commission.

The commission was directed to urge upon the president and congress of the United States the immediate enactment into law of the recommendations set forth by the governor of New York and the legislature on the subject of the alien insane together with such other and further amendments to the federal laws as the commission may deem necessary or advisable.

The commission is further directed to secure the coöperation of other States affected by or interested in the matters pertaining to the alien insane to the end that all necessary amendments to the federal laws may be secured forthwith.

The creation of this commission was the result of an investigation concerning the condition of the alien insane in New York State. This report was submitted by the governor to the legislature in February, 1914, together with a special message and the legislature passed a concurrent resolution urging federal legislation to prevent immigration of insane aliens. Subsequently, the law creating the commission was enacted.

Interstate Commerce—Intoxicating Liquors. An important change was made in the relation of state and federal legislation on the subject of interstate commerce in intoxicating liquors by the passage of the Webb-Kenyon act in March, 1913, which was entitled "An act divesting intoxicating liquors of their interstate character in certain cases." This act provided that the "shipment or transportation, in any manner or by any means whatsoever, of any spirituous, vinous, malted, fermented or other intoxicating liquor of any kind from one State, territory or district of the United States or place non-contiguous to but subject to the jurisdiction thereof or from any foreign country into any State, territory or district of the United States or place non-contiguous to but subject to the jurisdiction thereof, which said spirituous, vinous, malted, fermented or other intoxicating liquor is intended, by any person interested therein, to be received, possessed, sold or in any manner used either in the original package or otherwise in violation of any law of such State, territory or district of the United States or place non-contiguous to but subject to the jurisdiction thereof are hereby prohibited."

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The bill was vetoed by President Taft in the closing days of his term; on the constitutional ground that congress could not divest itself of the power over interstate commerce and could not grant to the States the right to prohibit liquor as a commodity of interstate commerce. The objections were not sustained by the congress and the bill was passed over the veto of the President.

This law had for several years been the goal of the prohibition forces. Prohibition and local option laws had been frequently nullified by the lack of power on the part of States to prevent shipment from other States into dry territory. The Wilson act of 1890 had helped a little to overcome the difficulty with its provisions that shipments in interstate commerce upon crossing State lines should be subject to State laws, enacted in the exercise of police powers to the same extent as if the liquor had been produced in the State. The Wilson law was upheld by the supreme court in 140 U.S. 555. The greater ease of preventing shipment into dry territory, over preventing sale within dry territory led to the present law.

Immediately following the enactment of the law, the States began to take advantage of the power conferred and in some cases anticipated the passage of the law. Kansas passed an act, before the enactment of the law by congress, prohibiting any person or common carrier from bringing liquor into the state or from transporting it within the State, except for lawful purposes. If brought in for lawful purposes a record must be filed by the carrier showing the nature of shipment and quantity. The law declared that the act should be construed in harmony with all federal statutes on the subject of interstate commerce in intoxicating liquors.

Florida was the first to take direct advantage of the Webb-Kenyon act and at the session the summer following (L 1913 p. 372) passed a law reciting the new federal act and prohibiting shipment into dry territory of any liquor intended for unlawful sale. Liquors shipped in violation of the law were made subject to seizure and destruction from the time of their arrival within the State.

The Tennessee act passed at a special session in October, 1913, prohibits the shipment into the State or shipment within the State of any intoxicating liquors except as provided by the act. The law requires that carriers keep a record of shipments which must be filed in the office of the county clerk. The record must show the purchaser, time of purchase and purpose for which ordered. The law expressly authorizes the purchase for personal use of quantities less than one gallon,

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and the benefits of the law consist primarily therefore in the record kept in the county clerk's office. Substantially the same law was passed in Mississippi in 1914. Both States though prohibition States, expressly authorize shipments intended for personal use.

Texas at the special session in 1913 passed a law similar to the others prohibiting shipment of liquors from a point in any other State and consigned to any consignee in dry territory to be used for unlawful purposes.

Many laws in attempting to regulate shipments of liquor into dry territory had inadvertently come up against the constitutional barrier of interfering with interstate commerce. Other laws frankly raised the issue by prohibiting all shipments whether interstate or intrastate, and were declared unconstitutional, the most recent case of this kind being the provisions of the dispensary law of South Carolina which sought to prohibit shipments into the state for personal use. This was declared void in 78 S.E. 516.

In the meantime the federal act has been assailed in the courts growing out of the passage of State laws and cases are pending in the United States supreme court involving the validity of the act.

The first important point was won by the friends of the law in the case of State vs. United States Express Co. (Iowa) 145 N.W. 451. In this case the court held that the manufacture, sale and transportation of intoxicating liquor is subject to regulation and probihition under the police powers of the State and that congress has the power to prohibit the shipment of intoxicating liquor into a State having the prohibitory law and thereby take such liquor out of the sphere of legitimate interstate commerce. It is held that the act simply removes the bar existing to the enforcement of police regulations by the State, because of the interstate character of the transaction. Congress did not use terms of permission to the States to act, but simply removed an impediment to the enforcement of the State laws in respect to imported packages in their original condition. One of the important holdings in this case was to the effect that after the Webb-Kenyon act was passed, it was not necessary for the State to re-enact its laws, regulating the sale and transportation of liquors. All State laws prohibiting shipment of liquor into dry territory are thus under this decision made to apply automatically to interstate shipments in the same manner as they have formerly applied to intrastate shipments.

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Constitutional Amendments and Referred Acts, November Election, 1914. At a time when the principle of direct legislation is attracting much attention and has met with wide acceptance, a review of the extent to which that institution was made use of at the elections in November, 1914, should possess some measure of interest. This review covers both constitutional amendments and statutes and includes five classes of measures presented for approval: Amendments proposed by legislatures; amendments proposed by inititative petition; statutes referred to the people by legislatures; statutes passed by legislatures and coming to the electorate on referendum petition, and statutes proposed by initiative petition.

Referenda were taken in thirty-two States on 287 propositions, of which number 120 were approved. Of the total number of measures, it is a notable fact that more than 50 per cent are offered in the six States of California, Oregon, Arizona, Louisiana, Colorado, and Missouri. In twenty-eight of these States there were constitutional amendments pending and in fifteen there were statutes voted upon. Of the 200 constitutional amendments proposed, 90 were adopted and of the 87 statutes, 30 were approved. California easily leads with 48 propositions followed by Oregon with 29.

With reference to amendments alone, California led with 30, followed by Oregon and Louisiana with 17 each. The 33 amendments proposed on initiative petition were distributed among six States, among which Oregon led with 10. Among the amendments presented, 49 per cent of those referred by legislatures, and 21 per cent of those referred by initiative petition were approved.

A question as to the discrimination exercised by the voters is raised by the fact that in thirteen States where more than one amendment was offered, the amendments proposed were either all accepted or all rejected without exception. It would appear that greater discrimination was exercised in the case of measures coming directly from popular initiative than in case of those coming from the legislatures. It is true, as would be anticipated, that amendments were more numerous in those States whose constitutions contain much statutory matter.

With respect to laws referred, California led again with 18, followed by Arizona and Oregon with 14 and 12 respectively. As to the method by which the laws were brought to a referendum, it appears that initiative petition was responsible for the appearance of the largest number. It should be noted that the vote on the two laws referred by the legislature in Vermont, was not mandatory but was advisory only.

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Constitutional amendments and referred laws may perhaps best be considered separately when viewed with reference to subject matter.

Giving attention first to constitutional amendments, it appears that local government and local finance includes the largest number of measures, followed in order by finance and taxation, the judicial department, and public works. Likewise the same group contains the largest number adopted, followed in this case by finance and taxation and the judicial department. Naturally, measures affecting the organization of government are more numerous among the amendments than among the referred acts while the latter class includes a greater number of measures of a social and economic character. It is likewise found that measures affecting governmental organization were more often proposed by legislatures than by initiative petition.

The most radical proposals with respect to the legislature were one in Oregon to abolish the senate, and another in the same State to elect the members of the legislature at large; neither was successful. Five amendments affected the salaries and expenses of the members, but in no case apparently to reduce them, and in no case were they approved. It may be noted that the measures affecting salaries all originated with the legislatures while the Oregon proposals above mentioned were the product of initiative petition.

A proposal to lengthen the legislative term in Georgia was approved, but a similar measure was defeated in South Dakota. A revision of legislative apportionment was approved in Mississippi, but defeated in Minnesota.

Louisiana voted to increase the salary of the governor but Nebraska refused to do the same for all its executive officers. Nebraska refused, also, to make the term of the governor two years as did Oregon to create the office of lieutenant governor. In New Mexico the term of executive officers was fixed at two years and they were made ineligible for a succeeding period of two years but in Idaho the same officers were refused an extension of term to four years.

In a series of seven amendments Mississippi revised its judicial system, making its supreme court elective for a term of eight years. Florida voted to reorganize its judicial department while Idaho and Minnesota decided not to increase the number of their highest court. Georgia found it necessary to resort to constitutional amendment to increase the salary of a judge in a single county. While in Mississippi henceforth, nine jurors may render a verdict, a similar concession was denied in Colorado and Nebraska refused the same privilege to ten jurors.

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California sought to expedite justice by limiting the granting of new trials upon error.

Equal suffrage was voted upon in seven States: Nevada, Montana, Nebraska, Missouri, North Dakota, Ohio and South Dakota, but was unsuccessful in all but the first two. Louisiana refused to sanction office holding by women even in positions connected with education and public institutions. Michigan provided for absent voting. Plurality elections and preferential voting failed of approval in California.

Two amendments introducing the initiative and referendum in North Dakota in respect to constitutional amendments and with respect to laws were approved but similar measures in Mississippi, Minnesota and Wisconsin failed of approval. Likewise an amendment directing the Texas legislature to enact a law introducing these features in that State failed. Arizona strengthened this agency by voting that measures adopted by initiative and referendum could not be amended, vetoed or repealed except in the same manner. On the other hand, attempts to abridge the use of the same devices were defeated in Colorado, Missouri, and South Dakota. The recall was adopted in Louisiana and Kansas but rejected in Minnesota and Wisconsin.

The substitution of a classified system of taxation for the general property tax was proposed in seven States: Kansas, Nebraska, North Carolina, Ohio, Oregon (two amendments) and North Dakota, but was approved only in the last instance. Oregon also rejected a proposal reaffirming her adherence to the general property tax coupled with a $300 exemption. New Mexico voted to revise her taxing system. Measures were approved permitting exemptions of educational institutions and shipping in California, and canals and money on hand in Louisiana, but a proposal to exempt property to the value of $1500 was rejected in Oregon. Special taxes were proposed in six instances, but save for a tax on foreign banks and a permissive one in aid of local fire departments, both in Louisiana, all were rejected.

Eleven successful proposals in the field of local government were local measures relating to individual counties or cities in Georgia and South Carolina. Measures granting or extending home rule privileges were voted on in California, Missouri, and Wisconsin but were approved only in California. Attempts to limit municipal indebtedness in certain particulars were defeated in Arizona, California, Colorado, and Missouri.

Power to issue municipal bonds for special purposes was denied in Louisiana, Missouri and Oregon. In California, Florida, Georgia,

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Missouri, New Mexico, and Oregon changes in the machinery of local government were under consideration. Two measures each in California and Oregon looked toward the union of cities or the consolidation of county and city government but union of county and city in the latter State failed of approval.

Irrigation, reclamation and water conservancy were under consideration in California (two amendments) where they were adopted and in Arizona, South Dakota and Washington where they were rejected. Authorization of State or local indebtedness for highways was sought in North Dakota, Arizona, Michigan, Missouri (three propositions) and Minnesota, but was granted only in the first case. A drainage measure was approved in Louisiana but disapproved in Michigan. State elevators were approved in North Dakota and a municipal canal in Louisiana, but the construction of sea walls and reclamation projects by counties was disapproved in Texas. Power of excess condemnation for public improvements was denied in both California and Wisconsin.

California disapproved of non-partisan nominations of delegates to constitutional conventions as did Colorado an amendment to change the manner of proposing and publishing amendments. A like fate befell two proposals in Wisconsin prescribing a shorter method of amendment and obliging the legislature to submit on petition amendments to the people for approval.

North Carolina refused to forego the practice of creating corporations by special act. California arrived at an adjustment between State and locality of the control of public utilities. In Colorado an attempt to declare newspapers public utilities was defeated. Labor matters like most other topics in the field of social and economic reform were much more frequently the subject of statutory than constitutional proposal, though constitutional sanction was sought and granted for compulsory State insurance for workingmen in Wyoming and for minimum wage legislation in California. The fixing of an eight-hour labor day in the constitution of Oregon was defeated. Two measures permitting the State to enter the general insurance business were rejected in Wisconsin. The anti-alien land question was suggested by an unsuccessful proposal to permit aliens to own land in municipal corporations in Washington, if residents, but forfeiting the same upon five years non-residence. Educational proposals were chiefly statutory but South Carolina placed her school for the deaf under the benefits of the land grant fund, and Louisiana permitted a bond issue for New Orleans schools. North Carolina sought in vain a constitutional requirement of

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a six-months school year. The general disapproval of all amendments in North Carolina extended even to verbal changes such as the proposed excision of certain temporary provisions applicable only at the time of taking effect of the constitution, and the substitution of the words "War between the States" for the words "insurrection or rebellion."

Constitutional State-wide prohibition was submitted in five States: Arizona, Colorado, Oregon, California, and Ohio and was successful in the first three. Ohio voted to confine local option to the smaller areas of township and city rather than the county. In Arizona and California the opponents of prohibition vainly sought to cast an anchor to windward by proposing that the subject be not voted on oftener than once in eight years, and in the latter State also that if prohibition should be adopted it should not take effect until a certain number of months had elapsed.

If attention now be directed to the statutory measures presented for direct action, the number relating to matters of governmental structure appear relatively few. The single act relating to the legislature is a proposal submitted by the legislature of Oregon to increase its own pay. The request was denied. Initiative acts would abolish one administrative board in Oregon and consolidate two others, and abolish the bureau of inspection of public offices in Washington. None were approved by the people. An initiative act for a non-partisan judiciary in Oregon was likewise rejected. The Massachusetts legislature submitted an act abolishing the party enrollment feature of their primary law. The Vermont legislature submitted two primary election measures for an advisory referendum. Both the Massachusetts and the Vermont acts were approved. South Dakota rejected a revised primary law as did California an act to permit absent voting. Oregon rejected a proposal to legalize primary elections of delegates to recommend names to be voted on at primary elections.

In the realm of finance California voted on four bonding propositions of which two, for State buildings at San Francisco and Sacramento, were approved. Two bond issues were rejected in Oregon. Arizona proposed to allow each owner to assess his own property for taxation, the State reserving the right to take the property at such valuation but this failed of approval.

Three Arizona acts related to counties and county seats and two Missouri acts would have, had they been approved, extended the home rule privileges of certain cities.

Oregon refused to endorse a proposition to permit the building of

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municipal docks. A somewhat comprehensive initiated act in Arizona was approved abolishing State contracts for labor, authorizing a state printing plant and a banking system. California created a water commission and approved an issue of bonds for the improvement of San Francisco harbor. Colorado voted a mill tax for highways. Washington refused to create an irrigation board and to make an appropriation for irrigation.

California, Indiana and South Dakota all declined to approve proposed constitutional conventions.

Corporations, utilities and securities were a favorite subject of statutory referenda. The public utilities act of Maine was approved but certain sections of the Colorado act were disapproved. Arizona ratified a three cent fare act of the legislature but Missouri rejected a "full crew" act of her legislature. A "blue-sky" law by the legislature was approved in California but similar acts initiated by petition in California and Washington were rejected. Colorado refused to undertake the regulation of commission merchants as proposed by the legislature. Teachers pensions were disapproved in Washington but old age and mothers pensions were adopted in Arizona along with the abolition of almshouses.

Statutes relating to labor were offered in profusion usually by initiative petition. Eight hour day laws for males and females were disapproved in California and Washington as was a similar law for women in Oregon. Massachusetts approved a half-holiday on Saturday for laborers for the State. One day of rest in seven was defeated in California. Arizona approved an anti-blacklisting act and an act prescribing electrical constructions in the interests of safety, and also a law prescribing that at least eighty per cent of the laborers employed by any person employing over five workmen shall be native born or voters. Washington forbade the taking of fees by employment agencies. Colorado declined to create an unpaid child welfare commsion.

Nebraska approved a Workmen's Compensation law but Montana refused to do so. Colorado modified its liability law but Washington refused to approve an act requiring first aid by the employer to the extent of one hundred dollars.

Montana approved a system of State loans on farm lands, and California adopted the Torren's system of land registration.

In educational legislation Montana refused both to increase the school tax levy and to consolidate the State colleges and Nebraska declined to remove and consolidate its university as proposed by the

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legislature. A State bond issue for buildings at the University of California was approved.

Oregon abolished the death penalty though Arizona refused to do the same. Arizona approved a pardon and probation system but Colorado rejected a probation law. Washington alone undertakes to inaugurate prohibition by an initiative statute. California voted to prohibit prize fights though Montana refused to do the same with boxing exhibitions. California also approved a legislative red light abatement act.

FRANK G. BATES.

Indiana University.

Administration of Minimum Wage Laws in the United States. Nine States now have minimum wage laws, California, Colorado, Massachusetts, Minnesota, Nebraska, Oregon, Utah, Washington, and Wisconsin. The Massachusetts law was passed in 1912. The other States followed in 1913.

California, Oregon, and Washington have an industrial welfare commission of five, three and five members, respectively. These boards are given broader powers than the other commissions in that they have charge of the hours and conditions of labor as well as the minimum wage. Colorado has a State wage board of three members. Massachusetts, Minnesota and Nebraska have a minimum wage commission of three members. In Utah the law is administered by the commissioner of immigration, labor and statistics, and in Wisconsin by the industrial commission, boards already in existence.

Since the jurisdiction of these boards is only over the wages of minors and of adult women, there is usually a provision for a woman member on these commissions. In California, Colorado, Minnesota and Nebraska at least one member must be a woman. In Massachusetts a woman may be a member, and in the other States no definite provision is made. In California and Massachusetts this is the only provision concerning membership. In other States additional requirements are made. In Colorado one member shall be a representative of labor, and one an employer of labor, in Minnesota one must be an employer of women; in Oregon the members shall be selected so far as possible so that one will represent the interests of the employing class, one the interests of the employed class, and one will be fair and impartial between employers and employed and will work for the best interests of the public as a whole. In Minnesota and Nebraska provision is made for ex-officio

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members; the commissioner of labor being a member in the former, and the deputy commissioner of labor, and one member of the political science department of the University of Nebraska being members in the latter. The governor is also ex-officio member in Nebraska in addition to the three provided for in the law. Washington alone is peculiar in its provisions concerning membership. Instead of attempting to secure representatives of the employers and employees, the law specifically provides that no person shall be eligible to membership on the commission who has within five years been a member of any manufacturers' or employers' association or of any labor union.

In none of the States do members of the commissions receive a salary, except in Minnesota where the appointed woman member is secretary of the commission and receives a salary of $1800, and except, of course, in Utah and Wisconsin where pre-existing boards administer the law. In California and Massachusetts, the members receive a per diem fee of $10 for actual service. In all the States the appointive members are selected by the governor, and receive their traveling expenses, and may hire a secretary and clerical assistance.

The first duty of the State commission is to inquire into the wages paid in any industry and to ascertain the lowest amount that can be considered a living wage. Such investigations are mandatory in seven of the States. The power to investigate is discretionary in Oregon and Minnesota, but becomes mandatory in the latter State upon the petition of not less than a hundred persons employed in any industry or occupation in which women and minors are employed. The various laws define a minimum wage, the general principle being "the necessary cost of living and to maintain the worker in health."

In order to provide the commission with material on which to base its investigations most of the laws require that the employers shall keep a record of the name and address and age of persons employed. The laws also give the commission power to issue a special license to defective or physically incapacitated persons, or to learners or apprentices to work for a sum less than the minimum wage, but such licenses usually are not for more than six months.

If after an investigation the commission finds that women and minors in such occupation are receiving less than the minimum deemed necessary, two courses are open. The commission may, after holding a public hearing, determine upon a minimum wage rate, or it may establish a subordinate wage board. There is a subordinate board for each industry considered, except in Wisconsin where industries may be classified for the purpose. These subordinate boards are mandatory

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only in Wisconsin, and in Massachusetts and Nebraska in so far as wage rates for women are concerned. Colorado alone has no provision for such a board. In determining the wage for minors no such advisory board is required. Careful provision is made in most of the States to secure fair representation of employers and employees on the subordinate wage boards. In California, Massachusetts, Minnesota, Nebraska, Oregon and Washington, it is definitely provided that there shall be equal representation, though the exact number is left to the discretion of the commission. In Wisconsin the provision is that the wage board must be so constituted as to fairly represent employers, employees, and the public. In Massachusetts, Minnesota, Nebraska, Oregon, Washington, and Wisconsin it is required that disinterested people shall represent the public. In California, Nebraska, Oregon and Washington a member or members of the commission are members of the wage board. In Minnesota it is required that at least one-fifth of the board shall be women, but this provision is hardly necessary since subordinate wage boards are required only for determining the wages of adult women, and their representatives would probably be women.

These subordinate wage boards are purely advisory in character. The commission prescribes rules for the selection of representatives and for the procedure of the board, except only in Minnesota where it is provided that representatives shall so far as possible be chosen by election from the employers and employees respectively. These subordinate boards have powers of investigation, either conferred upon them by law or by the rules of the commission, and their chief function is to consider the reports of the investigations of the commission, hear testimony, and reach an agreement on the minimum wage rate which should be set.

In case a subordinate wage board is created, the procedure is as follows:—The commission submits the results of its investigations to the subordinate board which may thereon agree upon a minimum rate or may ask for further investigation. When the wage board has agreed upon a rate its recommendations are submitted to the commission which may return the recommendations to the subordinate board for further consideration, or may call another board. If the commission approves the recommendations it must hold a public hearing and then establishes a minimum rate by issuing to the employers orders.

In all the States except Massachusetts and Nebraska the final ruling of the commission, promulgated in the form of orders to the employers, is mandatory. In these two States the law depends for its force solely upon public opinion. The commission is given authority to publish the

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names of all employers who refuse to pay the minimum wage decided upon by the commission. Such publicity is the only power behind the commission's recommendations. In all the other States it is made a misdemeanor either to violate the rulings of the commission by paying less than the minimum rate set, or to discriminate against any employee who has given testimony before the commission or wage board. Such violation of the law is prosecuted as in the case of other misdemeanors and a fine is set, including the possibility of imprisonment in some States. In Minnesota, Oregon and Washington it is definitely provided that an employee who has been paid less than the minimum rate, after the ruling of the commission, may recover from her employer by civil action the total amount due her, including costs and attorney fees. And this provision has been carried out in those States.

The power of the court to review or set aside the decisions of the commission is variously restricted. In California, the employer must appeal within twenty days, and the court may only set aside the determination of the commission in case it finds that the commission acted without or in excess of its powers, or if the determination was procured by fraud. The findings of fact made by the commission are, in the absence of fraud, conclusive. In Colorado the employer may appeal to the court on the grounds that the decision of the commission is unlawful or unreasonable, but the evidence considered upon such appeal must be confined to the evidence presented to the board in the case from the decision of which the appeal is taken, and the order of the board remains in full force until the order is reversed or set aside by the court. In Massachusetts an employer may file with the court a declaration on oath that compliance with the commission's ruling would make it impossible for him to conduct his business at a reasonable profit. The court may review the recommendations of the commission and may issue an order restraining the commission from publishing the name of that employer if the court sustains his declaration. Nebraska is almost identical in this respect with Massachusetts, except that the declaration required states that compliance would endanger the prosperity of his business. Review in both cases is under the rules of equity procedure.

In Oregon there is no appeal from the decision of the commission on questions of fact. Appeal may be taken to the circuit courts on questions of law.

F. H. Guild.[1]

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The Reorganization of County Government in 1913 and 1914. The question of reorganization of county government has gained sufficient attention to cause concerted efforts toward a regeneration of the various county systems now in vogue. Legislation was enacted or proposed in several States in 1913 and 1914 on phases of this subject. New York made provision[1] by an act of the 1914 legislature for the appointment by the boards of supervisors in any county adjoining a city of the first class, of a commission of taxpayers not exceeding seven in number who are to serve without compensation. The commission is to examine the State laws applicable to the county and the advisability of changing methods and forms of county governments, and investigate the form of government of other cities and counties for the purpose of recommending an improvement in the government and welfare of the people of the county. A report of its investigation , findings, and recommendations are to be made to the board of supervisors of such county. Expenses of the commission in such cases are paid from a tax levied by the supervisors or from other sources.

The movement for county home rule in California offers a possible solution of the county problem. By the adoption of a constitutional amendment[2] permitting freeholders' charters for counties, any county may frame a charter for its own government consistent with and subject to the State constitution, by the election of a board of fifteen (15) freeholders or by petition signed by fifteen per cent of the qualified electors. The proposed charter must be published for ten (10) days and submitted to the county electorate in not less than thirty (30) nor more than sixty (60) days after the completion of publication. It must be adopted by a majority of the votes cast and before it becomes fully operative, must be ratified by the next succeeding legislature.

Certain provisions relating to boards of supervisors are required to be incorporated in the charters and certain additional provisions may be made in the charter, among others for the care, construction, maintenance, repair, inspection, and supervision of roads, highways, and bridges, with certain limitations as to the formation of districts and the voting of bonds.

Two counties in California have taken the opportunity to inaugurate new charters, namely: San Francisco[3] and San Bernardino[4] counties.

[1] L. 1914, c. 324, p. 921.
[2] L. 1911, c. 64, p. 2168.
[3] L. 1913, c. 5, p. 1484.
[4] S. L. 1913, c. 33, p. 1652.

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The San Bernardino charter provides for the appointment by the board of supervisors of all the county officers, eliminates the fee system, and sets the salary schedule. An amendment has been proposed which provides for the election of a number of the officers instead of the appointment of all of them by the board. This will require a three-fourths vote of the electorate.

The important features of the San Francisco charter may be enumerated.

a. The supervisors—who must be elective under the constitution—the sheriff, the district attorney, and the assessor are chosen by the people. The auditor, the coroner, the county clerk, the public administrator, the recorder, the surveyor, the tax collector, and the treasurer are appointed by the board of supervisors from an eligible list prepared by the civil service commission.

b. The number of deputies, clerks, and attachés in office is fixed by the supervisors, under the charter. Heretofore they were prescribed by the legislature.

c. The justices of peace and constables were formerly elective. Under the charter, the justices remain elective, but the constables are appointed by the sheriff from a list of eligibles prepared by the civil service commission.

d. Constables are made deputy sheriffs, ex-officio, and constitute a constabulary department with the sheriff at its head.

e. All salaries are fixed by the supervisors except the salaries of the supervisors which are stated in the charter, and the salaries of officers and employees of the civil service commission. All fees must be turned over to the board.

f. A short elective list and biennial election of officers has the advantage of a short ballot.

g. The creation of a road department with a road commissioner to act under the rules and regulations of the board of supervisors is a new feature.

h. An efficiency board, a civil service commission, and the recall of elective and appointive officers are entirely new provisions.

A plan for organizing and separating the relations of cities and counties known as the county-city plan is being adopted by some of the States.

A constitutional amendment proposed in Oregon provides for a board of directors of three or more to hire a county business manager to hire all the other county officers. The county directors are to

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receive no salary, aside from the expense incurred by the office. The board is to lay out general plans for county business and see that the manager is efficient and faithful. The amendment was defeated however at the polls in November, 1914.

The Maryland legislature of 1914 passed an act proposing a constitutional amendment permitting home rule in the city and county of Baltimore.[5] Upon the demand of the mayor of Baltimore and the city council or on petition of 20 per cent of the registered voters, the board of election supervisors are required to provide for the election of a charter board. If a majority be in favor of the creation of a board, the eleven nominees of the city of Baltimore or the five nominees in the county, receiving the largest number of votes, constitute the charter board. The board is required to prepare and report a charter within six (6) months to the mayor of Baltimore or president of the board of county commissioners. This charter is to be published within thirty days after the report, and submitted to the voters at the next election. If adopted by the people, the charter is to be subject only to the constitution and public general laws of the State.

Every charter adopted under this section is to make provision for a legislative body and a chief executive officer which shall have full power to enact local laws including the power to repeal or amend local laws enacted by the general assembly upon all matters covered by express powers granted. Amendments may be proposed by the mayor and city council of the city of Baltimore or the county council, or by petition signed by not less than 20 per cent of the registered voters of the city or county. The manner of publication and submission of a charter amendment is the same as in the case of a charter.

The classification of counties under a general county law which allows for differences in the number of officers and salaries, has been introduced in some States to relieve the legislature of a large amount of local legislation which would otherwise be fixed at each session.

The California legislature[6] proposes a constitutional amendment relating to the creation of municipal corporations by general law instead of special laws. Cities and towns organized under this provision may provide for the performance by county officers of certain municipal functions, whenever the discharge of such municipal functions by county officers is authorized by general laws or by the provisions of a county charter framed under the constitution.

[5] L. Md. 1914, c. 416, p. 657.
[6] L. 1913, c. 90, p. 1732.

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Montana amended an act of the 1907 legislature by an act[7] in 1913 which provides for the classification of counties. This law enumerates the number of county officers, and fixes the compensation of such officers according to the classification. This classification, based upon population, divides the counties into eight different groups; the officers and salaries of each group are enumerated.

Wisconsin[8] made an attempt to provide for an optional commission plan of government for all counties except those having 250,000 population or more following the general law relating to the commission form of government for cities. This bill did not pass the legislature of 1913.

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[7] L. 1913, c. 109, p. 451.

[8] Assembly bill no. 808 was passed by the Assembly 36 aye, 40 no. 24 not voting, 6/11/13. Senate refused concurrence. 1/23/13.

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NEWS AND NOTES

Personal and Bibliographical

EDITED BY JOHN M. MATHEWS

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At the November meeting of the Executive Council of the American Political Science Association, it was voted to discontinue the publication of the annual volume of *Proceedings*, to enlarge each issue of this Review to approximately 220 pages, and hereafter to publish in the Review such of the papers read at the annual meetings of the Association as may seem desirable in the opinion of the Editorial Board of the Review. In this issue appears the presidential address of Prof. J. B. Moore.

THE ELEVENTH ANNUAL MEETING OF THE AMERICAN POLITICAL SCIENCE ASSOCIATION

The suspension of the publication of the annual volume of *Proceedings* seems to render desirable in this place a brief résumé of the proceedings at the recent meeting of the Association held at Chicago from December 29 to 31, 1914. The opening session on the afternoon of the 29th was held jointly with the American Philosophical Association and the Conference on Legal and Social Philosophy. The subject for discussion at this session was "Constitutional and Legal Guarantees." Papers were read by Prof. W. F. Dodd of the University of Illinois and G. H. Mead of the University of Chicago. Professor Dodd's paper, entitled "Political Safeguards and Constitutional Guarantees" dealt with the subject largely from the standpoint of the power exercised by the courts over legislation supposed to be in conflict with such guarantees; while the paper of Professor Mead presented the subject in the light of the theory of natural right and the growth of institutions. The discussion at the close of this meeting was participated in by Profs. J. P. Hall and Ernst Freund and by President Goodnow. The last named speaker pointed out that we are the most lawless people that claim to be civilized, and he urged that emphasis should be placed on social duties rather than on individual rights.

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The session on Tuesday evening was devoted to the presidential address of Prof. John Bassett Moore, who took as his subject "The Law and the Organization," which is published in this number of the REVIEW. His paper, which was listened to with great interest, was followed by an informal reception at the Congress Hotel.

At the session on the general subject of State Government, which took place Wednesday morning, the principal paper was read by President E. J. James of the University of Illinois, on "The Reorganization of State Government." He maintained that no general or permanent answer can be given to the question as to what is the best form of state government, because organization depends on function, and the functions of the States are continually changing, and their forms of government must therefore be continually changed to suit new conditions. The increase of federal authority and of municipal functions, he said, are cutting into the autonomy of the States, which find themselves between the upper and nether millstones of the nation and the city. At this session short papers were read dealing with the New York constitutional convention by Mr. J. I. Wyer of the New York State Library, and with administrative reorganization in Illinois, Minnesota, and Iowa by Professors J. A. Fairlie, J. S. Young, and F. E. Horack, respectively. Prof. C. A. Dykstra of the University of Kansas spoke on the proposal for so-called government by commission in that State.

At the general session held Wednesday afternoon, papers of rather diverse kinds were presented. President Goodnow gave an address on "Reform in China," while Professor Ogg of Wisconsin spoke on "The Trend of Italian Politics." President Goodnow showed that the Chinese have developed no conception of political authority or of individual rights, and that they live by moral precepts rather than by law. His contention that the Chinese are not fitted for representative government was taken exception to by Professors Beard of Columbia and Sudhindra Bose of the University of Iowa. At this session a paper was also presented by L. D. Upson of the Dayton Bureau of Municipal Research on "The City Manager Plan in Ohio." Sentiment seemed to favor this plan of city government over the commission plan from both theoretical and practical standpoints. As was pointed out, however, by Prof. A. R. Hatton, of Western Reserve, a danger lurking in the city manager plan is that the manager is likely to become a political rather than a purely administrative officer.

A dinner conference on instruction in elementary courses in American government was held Wednesday at the City Club, at which about

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seventy-five persons were present. Among those who spoke were Professors J. W. Garner, Jesse Macy, J. A. Woodburn, C. A. Beard, W. A. Schaper, K. F. Geiser, F. W. Dickey, and F. D. Bramhall.

The Wednesday evening session was devoted to the subject "The Administration of Justice: Its Machinery and Organization." Prof. A. M. Kales, of Northwestern University in his paper on "Methods of Selecting and Retiring Judges" urged the separation of the issues of the selection and the retirement of judges. He declared that the selection of judges by the electorate does not and cannot exist, because the people have no adequate knowledge of the qualifications of the candidates. He advocated the application of the short ballot idea, by allowing the people to elect the chief justice alone, and authorizing the chief justice to appoint the other judges. Prof. J. P. Hall of the University of Chicago outlined a proposed plan for a "Unified Court and its Branches." Other papers were read on "Court Organization for a Metropolitan District" by Mr. F. B. Johnstone, and "The Court of Conciliation" by Judge Manuel Levine. Following this meeting a smoker was held jointly with the Historical Association at the University Club.

The subject for the Thursday morning session was "The Independence and Equality of States," and papers were read on this topic by Prof. P. M. Brown of Princeton University and Prof. C. C. Hyde of Northwestern University. Professor Brown attacked the principle of the equality of States, but Prof. A. S. Hershey of Indiana University, who took Prof. Roland G. Usher's place, speaking on the subject "The Rights of Nationalities," maintained that the theory of equality still has validity. Professor Hershey traced the origin of the present European war to the failure of the Congress of Berlin to give adequate recognition to the rights of nationalities. Prof. A. C. Coolidge of Harvard, in his paper on "The Reconstruction of the Map of Europe," voiced the opinion that in reconstructing the map after the exhaustion of the struggling European nations, the principle of nationality would have to be considered, but that its application to specific cases bristled with difficulties. The discussion at the close of this session was participated in by Miss Jane Addams of Chicago and others. It seemed to be the opinion of all the speakers that in regard to the determination of the question of peace or war, governments should be to a greater extent under the control of the people.

At the business session Thursday afternoon, the Committee on Practical Training for Public Service submitted a report and the following officers of the Association were elected for the present year:

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President, Prof. Ernst Freund, of Chicago; first vice-president, Prof. Jesse Macy, of Iowa; second vice-president, Prof. W. B. Munro, of Harvard; third vice-president, Prof. Bernard Moses, of California; and secretary-treasurer, Prof. Chester Lloyd Jones, of the University of Wisconsin.

Prof. L. S. Rowe, of the University of Pennsylvania, who has been absent for special studies in South America for half a year resumes his work during the second semester.

Dr. Frederic C. Howe has been appointed by President Wilson commissioner of immigration at the port of New York.

A committee of the National Municipal League on training for public service, consisting of Prof. J. A. Fairlie, Richard S. Childs and Clinton Rogers Woodruff, has been appointed to coöperate with similar committees of the American Political Science Association and the American Economic Association.

Mr. Arthur Crosby Ludington, a member of the American Political Science Association and of the executive committee of the New York Citizen's Union, and author of *American Ballot Laws, 1888–1910*, died in London last November as the result of an accident.

Rear-Admiral Alfred T. Mahan, U. S. N., retired, well known for his works on international politics from the standpoint of sea power, died in Washington on December 1.

Dr. C. L. King, of the University of Pennsylvania, has been promoted from instructor to assistant professor of political science. Dr. King has succeeded Dr. Emory R. Johnson as editor of the *Annals of the American Academy of Political and Social Science*.

Dr. Delos F. Wilcox of New York City, has been appointed deputy commissioner of that city's department of water supply, gas and electricity.

Prof. Dana C. Munro, of the University of Wisconsin, has accepted the professorship of mediaeval history in Princeton University, and will assume his new duties next fall.

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Prof. W. A. Robinson, formerly of Yale and Idaho State University, has been appointed to take charge of the courses in government at Washington University, Saint Louis.

At Columbia University, Prof. H. L. McBain has been promoted to the rank of associate professor of municipal science and administration, and Dr. E. C. Stowell has been promoted to the rank of assistant professor of international law.

Mr. Theodore Marburg and Senator Elihu Root have been elected president and vice-president, respectively, of the American Society for Judicial Settlement of International Disputes.

Prof. Garrett Droppers of Williams College has been appointed United States minister to Greece, and Prof. W. W. McLaren, formerly of Keiogijuku University, Tokyo, is giving his courses for the present year.

Mr. Julius Klein has been appointed instructor in Latin-American history at Harvard University.

Hon. Nathan Matthews is the author of a book on *Municipal Charters*, which has been published by the Harvard University Press. Mr. Matthews was mayor of Boston from 1891 to 1895, and was also chairman of the commission which prepared the present charter of the city. For the last two or three years he has given lectures on Municipal Government at Harvard.

Dr. R. E. Curtis, who resigned last fall from the University of Georgia, has been appointed to a temporary vacancy in the Political Science Department of Oberlin College.

Dr. B. F. Moore, formerly of the University of Wisconsin, is engaged in research work this year for the United States Commission on Industrial Relations.

Mr. Dave W. Hardy of the University of Texas has been appointed assistant in political science in the University of Missouri.

Prof. Arnold Bennett Hall of the University of Wisconsin has just completed a revision and enlargement of Fishback's *Manual of Ele-*

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mentary Law. Much has been rewritten and new chapters have been added. It will be published by Bobbs-Merrill in January.

The American Telephone and Telegraph Company has brought out a third edition of their *Comparative Summary of Laws Relating to the Regulation of Telephone and Telegraph Companies by Commission.* The work seems to be well done and will be found very convenient for those interested in the subject.

The Albert Shaw lectures in American Diplomatic History at Johns Hopkins University were given this year by Prof. C. W. Alvord, of the University of Illinois. His subject was "The Partition of the West in 1783." The James Schouler lectures at the same university will be given this year by Prof. W. A. Dunning of Columbia University. His subject will be "Early Phases of Nineteenth Century Political Theory."

The Clark Memorial lectures at Amherst College are being delivered this year by Prof. George W. Kirchwey of Columbia University Law School on the subject "The Relation of Law and Legislation to Social Control."

Prof. H. C. Adams, of the University of Michigan, who has recently been engaged in work for the Chinese government, resumes his duties at the University this winter.

The annual series of lectures on the Barbour-Page Foundation at the University of Virginia were delivered this year by former President W. H. Taft upon the subject "The Executive Power: Its Duties and Responsibilities." Professor Taft also delivered a series of lectures at the University of Chicago in November on the same subject.

The lectures on the McBride Foundation at Western Reserve University were given this year by Sir Harry Johnston on the general subject of "Problems of the British Empire."

The fourth meeting of the University Commission on Southern Race Questions was held at George Washington University in December. Prof. W. M. Hunley, of the University of Virginia, is secretary of the commission.

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At a "Commonwealth Conference" held last December under the auspices of the University of Oregon for the consideration of state problems with a view to influencing the action of the present Oregon legislature, plans for the reorganization of the state administration, the amendment of the state budget law, the establishment of public employment agencies and legislation for hydro-electric municipal districts were discussed. Although the conference made no specific recommendations to the legislature, a committee was appointed to prepare a digest of the discussions for the use of that body.

At the annual meeting of the American Society of Mechanical Engineers held in New York City in December, one session was devoted to the subject of public service. At this session a paper on "Training for the Municipal Service in Germany" was read by Prof. C. L. King of the University of Pennsylvania, which has been published in a separate pamphlet of fourteen pages.

The annual Conference of State Governors was held at Madison and Milwaukee, Wisconsin, in November. About 20 governors were in attendance. Among the subjects discussed were rural credits, state control of natural resources, and the exemption of government land from state taxation. A committee was appointed on uniform state laws on safety and sanitation in places of employment. The *Proceedings of the Conference of Western Governors* held at Denver, Colorado, last April have been published (Denver, 1914, pp. 116). It contains papers upon aid to road construction, public lands, irrigation, and regional banks.

A committee of the New York Peace Society has been appointed to outline federal legislation for the safeguarding of the rights of aliens in the United States in connection with state legislation such as the Arizona and California anti-alien laws. The Arizona anti-alien employment act has been declared unconstitutional by the federal district court at San Francisco.

The International Commission of Jurists created by the Third International American Conference of 1906 to formulate codes of international law for the American nations will hold its second meeting at Rio de Janeiro during the coming summer. A special commission representing nine American states has been instituted by the Pan-American Union

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for the purpose of considering the common interests of the American neutral nations in the light of the present European war.

The third annual meeting of the Chamber of Commerce of the United States will be held in Washington on February 3, 4, and 5, 1915. The American merchant marine and coöperation of American business men in their export trade will probably have the greatest amount of attention at this meeting. If the results of earlier annual meetings may be taken as criteria, discussion of these subjects will result in expressions of opinion upon which business men of very diverse interests may agree. The federal reserve act, the federal trade commission act, and the Clayton act, in important provisions, accord with recommendations of the chamber which followed discussions at annual meetings and referenda.

The second annual Conference on 'Taxation in Indiana' was held in Indianapolis in December under the auspices of the Extension Division of Indiana University and Indiana State Tax Association. Papers were read by Profs. W. A. Rawles and T. F. Moran, and Mr. J. A. Lapp.

The second National Conference on Popular Government was held at Washington in January under the auspices of the National Popular Government League. The subjects considered were the direct primary, the initiative, referendum and recall, the need for an effective federal corrupt practices act and the problem of publicity. Mr. Judson King of Washington is secretary of the League.

The Conference for Better County Government which met at Schenectady, New York, in November was the first state-wide county conference ever held. Papers were read on various phases of county government. Mr. R. S. Childs contributed a paper on "The County Manager Plan."

The fifteenth annual meeting of the National Civic Federation was held in New York City, December 4 and 5. Sessions were held on "Governmental vs. Private Enterprise," "Social Insurance" "Workmen's Compensation" and "National Defense." A special committee of the executive council of the Federation, composed of Seth Low and W. R. Willcox has made a report on "A Draft Bill for the Regulation of Public Utilities, with Documents Relating Thereto" which has been published by the Federation (October 23, 1914, pp. 124).

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The thirty-fourth annual meeting of the National Civil Service Reform League was held in Chicago, December 3 and 4. Among others, papers were read on "A Constructive Programme for the National Civil Service," by William B. Hale, and on "Some Essential Features of a Model Civil Service Law" by George T. Keyes, secretary of the League. A number of the addresses are published in *Good Government* for January. The *Proceedings* of the Pueblo meeting of the National Assembly of Civil Service Commissions are in press and may be obtained for twenty-five cents from the secretary, John T. Doyle, care of the United States Civil Service Commission, Washington, D. C.

The Proceedings of the National Conference on Universities and Public Service held in New York City last May at the call of Mayor Jno. P. Mitchel have been published by the Committee on Practical Training for Public Service of the American Political Science Association (Madison, Wisconsin, 1914, pp. 289). This collection of papers will prove valuable in promoting the decided trend toward a greater participation by university men in public work. The Committee on Practical Training for Public Service has also published a pamphlet of fifteen pages containing a "Proposed Plan for Training Schools for Public Service."

At a meeting held in Boston on January attended by representatives of the principal universities and colleges in Massachusetts, an organization was formed to be known as the University Council of Massachusetts. The purpose of the Council is to extend the expert service of the faculties of these institutions to the State and municipalities. Pres. H. A. Garfield of Williams College and Prof. J. H. Ropes of Harvard were elected president and secretary, respectively, of the organization. An illustration of the proposed coöperation between the university and the State is the recent appointment by Governor Walsh of the members of the administrative board of the new Harvard-Technology Coöperative School for Health Officers as members of the newly created Massachusetts State Health Council.

Municipal universities are advantageously situated for public service, and, in this connection, it may be noted that the representatives of municipal universities who attended the recent meeting of the National Association of State Universities at Washington, met and formed an organization to be known as the Association of Urban Universities. The Association proposes to include in its membership all institutions coöperating with cities and training for public service.

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At the annual meeting of the National Municipal League, held at Baltimore in November, Mr. Arthur W. Dunn, secretary of the committee of the League on civic education presented the report of that committee on its work during the past year. It appears from the report that the committee has effected an affiliation with the federal bureau of education, whereby a regular series of publications on the subject of civic education may be distributed.

The eighth annual meeting of the American Association for Labor Legislation was held at Philadelphia, December 28–29, the principal topic discussed being Workmen's Insurance. At the same time and place was held the second national conference of the American Association on Unemployment.

The *New Republic*, a new weekly magazine, was started in November. It is styled "a journal of opinion which seeks to meet the challenge of a new time," and undertakes to fill in this country the place occupied in England by the leading weeklies. The editor-in-chief is Mr. Herbert Croly, author of *The Promise of American Life* and *Progressive Democracy*, assisted by a body of younger writers on public questions.

The *Green Bag* has been absorbed by the *Central Law Journal*, and its former editor Mr. Arthur W. Spencer has been added to the staff of editors of the *Journal*.

The report of the committee on international law of the American Bar Association, presented at the annual meeting of that organization in Washington last October, recommended coöperation with various associations having in view measures of international benefit. The report contains a list of the treaties negotiated and of the main international incidents affecting this country during the year.

Bulletin VI of the American Judicature Society contains reprints of papers on "Organization of Courts" by Roscoe Pound; "Methods of Selecting and Retiring Judges," by A. M. Kales; and "Local Courts of Limited Jurisdiction," by Herbert Harley. Bulletin VII is devoted to a draft of a proposed "State-wide Judicature Act." The secretary of the Society is Herbert Harley, 29 S. La Salle Street, Chicago.

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The report of the tour of the group of university men through the chief capitals of South America undertaken last summer under the auspices of the Carnegie Endownment for International Peace in the interest of closer relations between the two continents was published by that foundation in November. The report is written by Prof. H. E. Bard, of Columbia University.

The law enacted by the general assembly of Missouri in 1913 enabling absentee voters to cast their ballots at any place within the State received its first application at the general election in November. Despite the fact that many did not know of the existence of the law, a considerable number appear to have taken advantage of its provisions. A considerable proportion, however, of the ballots cast by absentee voters were rejected for various reasons.

The Missouri Code Commission, appointed by Governor Major to consider the revision and simplification of the civil and criminal procedure of the State of Missouri has submitted its report, which embodies 18 proposed bills to be submitted to the present general assembly. The commission considered that a number of changes in the constitution are necessary. As it did not believe, however, that it was practicable to secure the passage of a number of separate amendments, it recommends that provision should be made for a constitutional convention.[1]

At a number of colleges and universities special courses of lectures are being delivered this winter on various phases of the European war. Among such institutions are New York, Columbia, Chicago, Princeton, Amherst, Hamilton and Rice Institute. The course at Princeton University was given under the auspices of the International Polity Club. Among the speakers were Prof. John Bassett Moore and M. I. Pupin of Columbia and Dr. Bernhard Dernburg of Germany. At Columbia University, Prof. G. de Lapradelle of the École de Droit of the University of Paris, French exchange professor for the year 1914–15, delivered a series of lectures on "La Guerre et le Droit."

The possibility of the expansion of American trade in South America as a result of the European war has stimulated interest in South Ameri-

[1] Furnished by Prof. Isidor Loeb, University of Missouri.

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can government and institutions, and university courses are being organized upon this subject. Among these is the course in the government, history and economic life of South America recently inaugurated at the University of Virginia. This course is grouped with the courses in history, economics and political science, and is being conducted by Prof. W. M. Hunley and Dr. James Bardin.

The *Public Affairs Information Service*, formerly issued on mimeographed sheets, is now printed by the H. W. Wilson Company of White Plains, New York, cumulated bi-monthly and issued to member libraries. It enumerates and briefly summarizes a broad range of current items relating to public affairs of a more or less elusive and fugitive character, including public documents and reports, court decisions, and miscellaneous publications.

The village of Oberlin, Ohio, is contemplating the adoption of the manager form of government, and Prof. K. F. Geiser, of Oberlin College, is writing a series of articles for the local newspapers on this form of city government with a view to instructing the local citizens on the subject. Professor Geiser will shortly publish through Charles Scribner's Sons the Ohio edition of James and Sanford's *Government in State and Nation*.

The messages sent by state governors to the various legislatures at the beginning of the present sessions form an interesting body of communications. To mention but a single one, the Ohio legislature is addressed by the newly elected governor just inaugurated, in a tone markedly different from that used in the past two years. Evidently with vivid recollection of the campaign just past, Mr. Willis interprets its result as a declaration by the people of the State that they will not have executive domination of the legislature or centralisation of the administration. His inaugural suggestions to the general assembly are purposely vague, he will leave that body to its own guidance; but he lets it be plainly manifest, as consistency with his electoral campaign would indeed require, that he favors immediate and decisive withdrawal from the advanced position taken by the recent Cox administration in respect to state control of saloon licensing and state appointment (in place of local election) of tax assessors.[2]

[2] Contributed by Prof. H. R. Spencer, Ohio State University.

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The committee appointed two years ago by the Missouri senate for the purpose of investigating labor conditions in that State has submitted a report embodying a workmen's compensation bill, and a bill for an industrial commission to take the place of the existing bureaus of labor and statistics, mines and mine inspection, factory inspection and a number of free employment bureaus.[3]

In his *Historisch-Politische Aufsätze und Reden* (Munich and Berlin, Oldenburg, two volumes, 1914, pp. vi, 344, ii, 382), Hermann Oncken has gathered together a number of essays upon German politics and international relations. Of special interest are those dealing with the Monroe Doctrine, American expansion and foreign policy.

A recent volume in the Home University Library is that by H. P. Gooch on *Political Thought in England: from Bacon to Locke* (Henry Holt & Co.).

A volume of *Essays, Political and Historical*, by Charlemagne Tower, formerly minister to Austria-Hungary and ambassador to Russia and to Germany, has been published by J. B. Lippincott (Philadelphia, 1914). They deal with such subjects as: "Some Developments of Modern International Law," "The Treaty Obligation of the United States Relating to the Panama Canal," and "The European Attitude toward the Monroe Doctrine."

Prof. H. G. James' *Principles of Prussian Administration* (New York, The Macmillan Co., 1913, pp. 309) has peculiar interest at the present time. For it states the reasons for the great governmental efficiency of the German people which enables them to carry on almost single handed the tremendous struggle in which they are now engaged with almost the whole of the rest of Europe. Dr. James treats his subject from several viewpoints. He prefaces his description of existing conditions with a survey of the development of the Prussian administrative system. He also gives a clear and succinct account of the system as it now exists, treating of both its organization and the functions which it discharges. His book may be recommended to all those who are interested in administrative problems.

An abridged and revised edition of President A. Lawrence Lowell's well-known *Governments and Parties of Continental Europe* has been

[3] Furnished by Prof. Isidor Loeb, University of Missouri.

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brought out in a single volume (Cambridge, Harvard University Press, 1914). It is intended especially for use as a text-book.

A new and revised edition of Prof. Dean C. Worcester's *The Philippines, Past and Present* has been issued by the publishers, The Macmillan Company. The author has added a new chapter entitled "One Year of the New Era."

A two-volume work entitled *The Spanish Dependencies in South America, an Introduction to the History of their Civilization*, by Prof. Bernard Moses has been published by Smith, Elder & Co., London.

The *Report of the Commission on National Aid to Vocational Education*, created by the Sixty-third Congress, has made its appearance in two volumes. (House document 1004, 63d Cong. 2d sess., 1914, pp. 207, 292). The first volume contains the views and recommendations of the commission and the second a record of the hearings. The commission recommends the distribution of national funds among the States for the training of teachers of vocational subjects and, for the administration of these funds, recommends the creation of a federal board on vocational education. A bill providing for carrying out the recommendations of the commission is published in the report.

Harrington and his Oceana: A Study of a Seventeenth-Century Utopia and its Influence in America, by H. F. Russell Smith of St. John's College, Cambridge (Cambridge, The University Press, 1914, pp. ix, 223) is a study of the history and influence of a certain set of political ideas, in which the author attempts to show and estimate the influence which Harrington's forward-looking ideas as to certain governmental devices had in France and in America.

An elaborate discussion of certain phases of educational administration is contained in *The Organization and Administration of a State's Institutions of Higher Education*, by Arthur Lefevre (Austin, Texas, 1914, pp. 524), published for the Organization for the Enlargement by the State of Texas of its Institutions of Higher Education. It is divided into two parts, the first of which deals with the features of organization for which the legislature of the State is responsible and the second with internal organization and administration.

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Diplomatic Protection of Citizens Abroad by Dr. Edwin M. Borchard, Law Librarian of Congress, and lately Assistant Solicitor of the Department of State, is the title of an extensive work announced for early publication by the Banks Law Publishing Co.

The New York Constitutional Convention Commission, created by an act of the 1914 legislature for the purpose of collecting information for the use of the delegates to the convention, which meets in April, is taking steps toward the preparation and issuance of the following publications: (1) The full text of every constitutional provision that has been in force in the State at any time; (2) the complete text of the existing constitution, with elaborate annotations; (3) a subject-index digest of all the state constitutions; and (4) statistics and descriptive statements covering the work, organization and expenses of the various state departments. The commission also proposes to secure for the use of the delegates a supply of the *Proceedings of the New York Academy of Political Science* on the "Revision of the State Constitution." The commission is working in coöperation with the State Library, which furnishes its secretary and is to perform one or two of the projected services.

Of especial timeliness is the valuable collection of papers on "The Revision of the State Constitution" contained in the *Proceedings of the New York Academy of Political Science* for October. It includes many notable papers upon various topics which will come before the Constitutional Convention by such men as Elihu Root, Frederic C. Howe, Henry L. Stimson, F. A. Cleveland, Ernst Freund, W. F. Dodd, and others. The present volume constitutes Part I, dealing with the general principles and mechanics of revision and the structure of state government. The Academy proposes to issue, in a subsequent volume of the *Proceedings*, Part II, dealing with local government and the regulation of economic and social conditions.

The question as to the advisability of holding state constitutional conventions is coming up in the legislatures now in session in the contiguous States of Missouri, Illinois and Kansas. In Illinois a Constitutional Convention League has been formed to push the project. In Missouri, the League of Missouri Municipalities at its annual meeting held last December endorsed the movement for a constitutional convention.

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Volume XXV in the valuable collection Das Öffentliche Recht der Gegenwart is entitled *Das Staatsrecht des Vereinigten Koenigreichs Gross-Britannien-Irland*, by Julius Hatschek, of the University of Göttingen (Tübingen, J. C. B. Mohr, 1914, pp. 332).

The Report of the Librarian of Congress for the year ending June 30, 1914 has been issued (Washington, Government Printing Office, 1914, pp. 216). An appendix contains the texts of bills introduced and reports made in Congress upon the subject of a legislative reference bureau in the Library of Congress.

Compiled Statutes of the United States, Embracing the Statutes of the United States of a General and Permanent Nature, in Force December 31, 1913, compiled by John A. Mallory, with explanatory notes, has been brought out in five volumes by the West Publishing Co. of St. Paul.

In addition to the bibliography on the "European Crisis of 1914," the Library of Congress has recently published lists of references on "Federal Control of Commerce and Corporations: Special Aspects and Applications" (1914, pp. 104), and on "Water Rights and the Control of Water" (1914, pp. 104). The Library also has in press a list of references on "Convict Labor," and has in preparation new editions of the lists on "Child Labor" and "Industrial Arbitration."

Houghton, Mifflin Co. has just issued *Intervention and Colonization in Africa* by N. Dwight Harris, Professor of European Diplomatic History at Northwestern University. It is the first in a series on "World Diplomacy," the second volume of which, on *Intervention and Competition in Asia*, it is hoped will be ready for publication in two or three years.

A recent volume in the state government series being published by Scribner is that on *The Government of Kansas*, by Prof. C. A. Dykstra of the University of Kansas.

Modern Germany, by J. Ellis Barker, originally published in 1907, has been brought out in a fourth revised edition (New York, E. P. Dutton & Co., 1914). Considerable new matter has been introduced, bringing the work down to date.

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Anything upon the subject of the tariff from the pen of Prof. F. W. Taussig of Harvard is of value and we therefore welcome the publication of his new volume, *Some Aspects of the Tariff Question* (Cambridge, Harvard University Press, 1914) constituting volume XIII of the Harvard Economic Studies. The book is characterized by the publishers as "his first comprehensive treatment of the subject in the light of modern conditions." It first takes up general principles relating to the tariff and then considers specific applications of these principles with respect to the duties on sugar, iron and steel and textiles.

The History of Third Party Movements in Iowa, by Prof. F. E. Haynes is in preparation for publication by the State Historical Society of Iowa. The second volume of the Iowa Applied History Series prepared under the auspices of the Society is now in press, the separate papers having already been issued as reprints. Prof. B. F. Shambaugh, the editor of the series, contributes the introductory paper on *Scientific Law-making*. The other titles in the series are: *Reorganization of State Government in Iowa*, by F. E. Horack; *Home Rule in Iowa*, by O. K. Patton; *Direct Legislation in Iowa*, by J. Van der Zee; *Equal Suffrage in Iowa*, by F. E. Horack; *Selection of Public Officials in Iowa*, by H. J. Peterson; *Removal of Public Officials in Iowa*, by O. K. Patton; *The Merit System in Iowa*, by J. Van der Zee; *Social Legislation in Iowa*, by J. E. Briggs; *Child Labor Legislation in Iowa*, by F. E. Haynes; and *Poor Relief Legislation in Iowa*, by J. L. Gillin. The paper on *Home Rule in Iowa* is noticed elsewhere in this number of the REVIEW

An Economic Analysis of the Constitutional Restrictions upon Public Indebtedness in the United States, by Horace Secrist of the Department of Economics, Northwestern University (University of Wisconsin Bulletin No. 637, April, 1914, pp. 131) combines in unusual degree historical, economic, political and legal phases. It is divided into two parts, the first of which deals with constitutional restrictions upon state indebtedness and the second, with constitutional restrictions upon municipal indebtedness. The author criticises constitutional provisions applying uniformly to all municipalities, and urges that the borrowing powers of municipalities should be allowed to vary according to their character and function.

Studies in Ancient Hindoo Polity, by Narenda Nath Law, with an introductory essay by Prof. Radhakumud Mookerji (New York and

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London, Longmans, Green, 1914, vol. I, pp. xlv, 203) is based upon new source material found in the text of the famous Arthasastra of Kantilya, which was recently discovered, but the age of which is not definitely known. It sheds much new light upon matters connected with ancient Hindoo government, such as law, legal procedure and courts of justice, as well as upon general conditions of life at that time. The second volume of the *Studies*, it is expected will be devoted to the machinery of administration.

In a volume entitled *The Doctrine of Judicial Review: Its Legal and Historical Basis and Other Essays* (Princeton University Press, 1914, pp. vii, 177), Prof. Edward S. Corwin has brought together five essays, the titles of which are as follows: "Marbury v. Madison and the Doctrine of Judicial Review;" "We, The People;" "The Pelatiah Webster Myth;" "The Dred Scott Decision;" and "Some Possibilities in the Way of Treaty-Making." Most important are the papers on the "Dred Scott Decision," which appeared in substance in the *American Historical Review* for October, 1911; and the essay on "Marbury v. Madison," part of which appeared in the *Michigan Law Review* for May, 1914. The essay on "Marbury v. Madison" discusses in an interesting manner the arguments urged to support the judicial power, and concludes that "the power rests upon certain general principles thought by its framers to have been embodied in the constitution."[4]

Studies in Southern History and Politics (New York, Columbia University Press, 1914, pp. viii, 394) is the title of a collection of papers inscribed to Prof. William A. Dunning of Columbia University, and written by his former students as a tribute to him upon the occasion of his election to the presidency of the American Historical Association. The work is edited by Prof. James W. Garner of the University of Illinois, who contributes the preface and one of the papers. The various contributions cover a very wide range of interest and deal with many phases of Southern history and politics, both before and after the Civil War. Among the papers which may be specially mentioned as being of particular interest to political scientists are: "The Judicial Interpretation of the Confederate Constitution," by S. D. Brummer; "The Federal Enforcement Acts," by W. W. Davis, "Negro Suffrage in the South," by W. Roy Smith; "The Political Philosophy of John C. Calhoun," by Charles E. Merriam; "Southern Political Theories," by D. Y.

[4] Prepared by W. F. Dodd.

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Thomas; and "Southern Politics since the Civil War," by James W. Garner. The theme of the last named paper is that "the time has come when the South ought to free itself from the thraldom of a single issue [the negro question] and think more of questions that more vitally affect its economic welfare." An adequate index is provided.

The recent passage by Congress of important trust legislation renders especially timely *The Trust Problem*, by Prof. E. Dana Durand (Cambridge, Harvard University Press, 1914) containing an amplification of lectures delivered by the author at Harvard on such subjects as "The Necessity of Prohibition or Regulation," "The Possibility of Preventing Combination," and "The Alleged Economies and Advantages of Combination." In the light of recent developments, President Van Hise has revised his book, originally issued in 1912, *Concentration and Control: A Solution of the Trust Problem in the United States* (New York, Macmillan, new edition, 1914). The hearings before the House Committee on the Judiciary on *Trust Legislation* have been issued in two volumes (Washington, 1914, pp. 2055). *Trusts and Competition*, by John F. Crowell, is the title of a new volume in the National Social Science Series, published by A. C. McClurg & Co. and edited by President McVey of the University of North Dakota.

The Law Division of the Library of Congress is about to publish the third volume in the series of guides to foreign law, the enterprise begun some two years ago to make more readily available to the investigator of comparative law the material in the collections on foreign law which the Library of Congress has systematically brought together. The volume about to be published is the *Guide to the Law and Legal Literature of Spain*, prepared under the direction of Dr. Edwin M. Borchard, Law Librarian, by Thomas W. Palmer, Jr., Sheldon fellow from Harvard. The earlier volumes in the series are the *Bibliography of International Law and Continental Law* and the *Guide to the Law and Legal Literature of Germany*. The volume on Spain is intended to lay the foundation for a *Guide to the Law and Legal Literature of Latin America* which is now in course of preparation.

Reports have recently been issued by State Efficiency and Economy Commissions in Massachusetts, Minnesota, Pennsylvania and Illinois. That of the Massachusetts Commission is upon *Functions, Organization and Administration of the Departments in the Executive Branch of the*

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State Government (Boston, 1914, pp. 513). This report contains a mass of information not found in any other one place regarding each state department, board, commission and institution. A description also is given of types of departmental organization and methods of administration, together with some account of central control and supervision of state departments. The report is entirely expository and descriptive in character. Upon the basis of the information contained in the present report, the commission proposes later to issue further reports containing criticisms of existing conditions and constructive proposals for changes. The report of the Minnesota Efficiency and Economy Commission is the second and final report of that commission (St. Paul, 1914, pp. vii, 89). The recommendations of the commission embrace proposals for changes with regard to the organization of the civil administration, the merit system in the civil service, and the budget system in appropriations. All of these changes the commission proposes to bring about through the enactment of a "Civil Administration Code." The final report contains the text of this proposed code, with annotations and explanatory notes.

Recent publications dealing with taxation may be noted as follows: The Bureau of Corporations has published *Taxation of Corporations, pt. V, Mountain and Pacific States* (Washington, 1914, pp. 236). The portion dealing with California is especially interesting as that is the only State in the group which separates the sources of state and local revenue. This report completes the Bureau's survey of all except the Southern States. Two special tax commissions in the States have recently made reports, as follows: In Nebraska, *Report of the Special Commission on Revenue and Taxation*, appointed by Governor Morehead, pursuant to an act of 1913 (1914, pp. 243), and in Virginia, *Report of the Special Joint Committee on Tax Revision* to Governor Stuart in accordance with an act of March, 1914 (1914, pp. 298). Prof. G. O. Virtue of the University of Nebraska was a member of the Nebraska commission, and Prof. T. W. Page of the University of Virginia a member of the Virginia commission. Both reports consider the topic of separation of the sources of state and local revenue, and the Virginia commission recommends the creation of a state tax commission. Volume VIII of the *Proceedings of the National Tax Association*, containing the addresses delivered at the annual conference in Denver last September, was published in January. This volume contains the usual valuable features regarding state and local taxes and expenditures, and, in ad-

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dition, for the first time deals with federal taxation, several papers being devoted to the federal income tax. This new departure is a virtual recognition of the fact that the problem of state and local taxation cannot be adequately considered entirely apart from those of the nation. Various legal points involved in the administration of the federal income tax are reviewed in the report of the Committee on Taxation of the American Bar Association, presented at the meeting of that Association at its meeting last October in Washington, and which has been published in a pamphlet of twenty-five pages. Prof. Ernst Freund, of the University of Chicago, is chairman of the committee. *The Taxation of Land Values in Western Canada*, by Archibald Stalker (Montreal, 1914, pp. 56) is the title of a recent thesis for the master's degree in McGill University. Two bulletins recently issued by the Tax Reform Association (29 Broadway, New York City) contain respectively a review of state tax legislation during 1914 and a summary of proposed tax amendments to state constitutions. Information regarding further material recently issued on the subject of taxation may be obtained from a pamphlet bibliography on the subject issued by the National Tax Association (Headquarters, 15 Dey Street, New York City).

Houghton, Mifflin and Company are soon to publish *The Law and Usage of War*, by Sir Thomas Barclay. This is a practical handbook of the law and practice of war and prizes for the use of both students and laymen. Sir Thomas Barclay is one of the best-known British authorities on international law in its relation to war. His book is arranged in the form of a handbook dealing in alphabetical order with all the important topics which the present war suggests. The book thus begins with Admiralty Procedure and Air Craft, and ends with Waters Territorial and Wireless Telegraphy.

The paragraphs on neutrality which constitute a considerable portion of the book will be specially useful to Americans, both lawyers and laymen. In an Appendix are printed the Declaration of Paris and the full text of all important Hague conventions dealing with such subjects as the commencement of hostilities, the rights and duties of neutral powers, the treatment of merchant ships, the conversion of merchant ships to war ships, the amelioration of the condition of wounded and sick in armies in the field, expanding bullets, etc.

Home Rule in Iowa, by O. K. Patton. Published as number 3 of volume II of the Iowa Applied History Series, edited by Benjamin F.

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Shambaugh. This volume represents the most serious study of the home rule movement that has been attempted since F. J. Goodnow's book on municipal home rule. It has been called forth by reason of the fact that Dr. Goodnow's work was issued nearly twenty years ago and also because the home rule movement has become increasingly prominent in the twentieth century renaissance of municipal government. The author undertakes to state the problem of home rule, to review the history of the movement and the extent of the present application of the principle, to survey the situation in Iowa with a view to ascertaining home rule possibilities there and finally to offer suggestions which he deems advisable in connection with the reorganization of local government in that State.

Mr. Patton states his problem clearly, "What is the sphere in which local political corporations in Iowa should be allowed to move largely uncontrolled by the state government, and what is the sphere in which the activities of these local areas should be completely under the control of the State?" His examination of the history and development of home rule and his analysis of the home rule charter systems is admirable and timely. In his attempt to answer the problem, however, Mr. Patton offers no clear cut line of demarcation, except along lines already well worked out in experience. His attitude is revealed in the statement that "in time definite and more or less well-marked fields will be established for the activities of the State and local political corporations." This confidence in the ability of time to delimit the respective spheres of action is based on the adjustment of functions which has been gradually achieved in the relations between the States and the federal government. In his enumeration of functions that are distinctly of state-wide concern and those which properly fall within the sphere of local determination the author is generous to the municipalities, but makes evident his belief that in the debatable borderland no boundary can be fixed, inasmuch as it must always be fluctuating. In conclusion ten suggestions are offered for the application of the home rule principle in Iowa. Conspicuous among these is one that extends this power of self-government to counties as well as cities, a step which, as the author points out in an earlier chapter, might well involve the doing away with township government.

The monograph is one that will prove of service to students of municipal progress. Its conclusions give evidence of intelligent discrimination and a keen appreciation of the practical features of home rule as demonstrated in actual tests. Moreover, there has been a most

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commendable amount of effort expended to ascertain what are the facts regarding the operation of home rule in States where it now obtains.[5]

The Judicial Veto, by Horace A. Davis (Boston, Houghton, Mifflin, 1914, pp. vi, 148) adds another to the now numerous books dealing with the subject of judicial control over legislation. The larger part of the volume is devoted to a reprint, with some revision, of Mr. Davis's article in this REVIEW (vol. VII, p. 541) on "Annulment of Legislation by the Supreme Court." Mr. Davis here seeks to prove that those who framed and adopted the Constitution of the United States did not intend to give to the Supreme Court power to determine the constitutionality of acts of Congress. Mr. Davis is not familiar with the excellent article of Mr. Frank E. Melvin on "The Judicial Bulwark of the Constitution" (this REVIEW, vol. VIII, p. 167). The important point in Mr. Davis's argument is the claim that the judiciary act of 1789 denied the power of the Supreme Court to annul congressional legislation; on the basis of this claim the author classes the supporters of the judiciary act as opposed to judicial review. This assumption ignores the fact that jurisdiction may be something different from the law to be applied in the exercise of jurisdiction; the first may require an express grant of power by the legislature, but the latter need not. In addition, those seeking to class individuals as favoring or opposed to judicial review because of support or opposition of the judiciary act, fail to remember that this act covered many matters and may have been supported or opposed for many reasons. Because of the present importance of the subject of judicial review, we have been apt to regard this subject as of equal importance to the framers of the national Constitution.

The volume here under review is of most value for its first two chapters. In these chapters the author points out clearly and effectively the consequences of judicial review as now exercised and urges that a procedure be devised which will expressly recognize the State as a responsible party to every case in which the constitutionality of a statute is tested. The proposed plan for accomplishing this purpose is worthy of careful consideration.

Arms and Industry. A Study of the Foundations of International Polity. By Norman Angell. (New York, G. P. Putnam's Sons,

[5] Contributed by Russell M. Story, University of Illinois.

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1914, pp. xlv, 248.) When Mr. Angell's well known book *The Great Illusion* appeared a few years ago it was popularly understood in many quarters that the author laid the whole basis of international rivalry upon the mistaken idea that the prosperity of nations depended upon their political power, and that he held that once this erroneous conception (as he proceeded to prove to it be) was removed, international peace would be the automatic result. To these persons the present war in Europe seems, in consequence, to be a complete refutation of Mr. Angell's views, in that the international solidarity born of the modern commercial and financial system has been proved to have no internal cohesion. But no one was more ready than Mr. Angell to admit the presence of other motives than material ones in promoting the situation of mutual rivalry and distrust in Europe; indeed, the "psychological case for war" is treated of at greater length than the "economic case for war." Hence it is wide of the mark to say that the present war is a sufficient answer to Mr. Angell's arguments;—it is rather proof, if anything, that *The Great Illusion* was a very real illusion after all.

In the present volume the author returns to the ideas which formed the subject of *The Great Illusion*. The chapters of the book are lectures delivered on separate occasions before widely differing audiences, but the author has bound them together so as to illustrate the development of general principles and to form a connected whole. The scheme of the argument is as follows: the principle of the division of labor, which lies at the basis of economic production, creates an interdependence between nations which makes the effectiveness of physical coercion a steadily decreasing factor. This interdependence is particularly manifested in the system of international credit which is a sort of nervous organism by which an injury to one part of the social body is immediately communicated to the other parts. Passing from the economic to the moral issues, the author shows that the basis of civilization is a convention not to use force to obtain our rights but to rely upon moral influences. This does not imply, however, a renunciation of the right of self-defense, which may be looked upon as a neutralization, rather than a use, of force. But self-defense must properly be treated as a problem of two parties, not of one, else it will end in a competition which is both futile and provocative of tension in international relations.

The author belongs to the newer generation of pacifists in contrast with the older school whose chief appeal was to the moral case against war. In taking his stand upon the ground of the material futility of

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war he does not, however, minimize the value of the moral arguments which are brought against the non-material factors which make for war.[6]

France Herself Again, by Ernest Dimnet (New York and London, G. P. Putnam's Sons, 1914, pp. xii, 399) is an attempt to trace "the transformation of the public spirit which has been visible in France since the beginning of the twentieth century." But in order to do this, the author goes back and shows the deterioration of France under the Second Empire due to false ideals and low morals. The Tangier incident in 1905, however, was a "flash of lightning," and marks the awakening of the new France. While one may not agree with all the arguments and conclusions of the author, the value of the book as a whole is undoubted. The preface and conclusion were written since the outbreak of the European war. The book was written by the author himself in English.

In a small volume entitled *The Anti-Trust Act and the Supreme Court* (New York: Harper and Brothers, 1914. Pp. 132) ex-President Taft presents a brief but luminous account of the manner in which the act of 1890 has been judicially interpreted. The first two chapters state the limitations at common law upon rights of contract as to property, business and labor, and the general functions of the constitution and the courts in defining and protecting private rights. The manner in which the sugar trust case was prepared for trial by the government is severely criticized in the third chapter. Later decisions are then discussed in which it is shown how the doctrine of the Knight case has been gradually whittled away until there is practically none of it left. It is also argued that the doctrine as to "the rule of reason" declared in the Standard Oil and American Tobacco cases was not in essential conflict with the earlier cases. In his last chapter ex-President Taft expresses concern regarding various proposals pending in Congress for the amendment of the act, the tendency of which is, in his opinion, to leave first to an executive board and then to the court to decide and forbid what, in their judgment, is unfair competition. "If," he says, "this means more than what is included in unreasonable restraints of trade at common law now denounced by the anti-trust law, it would seem to be conferring legislative power." Mr. Taft believes that the doctrines in the Standard Oil and American Tobacco cases have been effective in securing the results at which they aimed.

[6] Contributed by Prof. C. G. Fenwick, Bryn Mawr College.

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The Balkan Wars, 1912–1913 (Princeton University Press, 1914, pp. 140) is the title of the publication in book form of the Stafford Little lectures delivered at Princeton in 1914 by Jacob Gould Schurman. Apart from the usefulness of the book as presenting in brief yet clear form the history of the fortunes of the Balkan States, it is of value as throwing light upon two important factors in the complicated relations of Slav to Greek and Turk. The first of these is the fact that in spite of the political overlordship of Turkey over the Balkans from the fourteenth to the nineteenth century, rigorous as it was, the influence of the Greek Church continued to survive in religious, intellectual and commercial affairs. In consequence the Greek patriarch was enabled to carry on a propaganda of Hellenism and to exercise a domination which explains the deep and abiding hostility of the Bulgarian to the Greek. The second factor was the complex population of Macedonia. Being an extension of the Servian, Bulgarian and Greek races, it became first the victim of Turkish revenge for the acts of the various insurgent bands sent to assert the claims of their respective nationalities, and subsequently the victim of the internecine war waged by Servia and Greece against Bulgaria. Mr. Schurman was in Athens during the course of both wars and his statement of the responsibility for the second war is an exceedingly fair one. Bulgaria, in opposing a conference of the four allies left no alternative but war, which, indeed, she herself was the first to begin. The author does not, however, attempt to place the responsibility for the lack of harmony between the civil government of Bulgaria and the military authorities.[7]

In view of the present status of international politics, the following recent foreign publications are of interest: *Die Grossmächte der Gegenwart*, by J. R. Kjellen (Leipzig, Teubner, 1914, pp. 208); *Des Cessions de Territoires envisagées dans leur Principe et dans leurs Effects relatifs au Changement de Souveraineté et de Nationalité*, by M. Costes (Paris, Rivière, 1914, pp. 236); and *Die Neutralisation von Staaten inbesondere die der Schweiz, Belgiens, Luxemburgs, und des früheren Kongostaates*, by S. Richter (Berlin, Rothschild, 1913, pp. 252).

The flood of publications dealing with various phases of the European war, for the most part ephemeral in character, continues unabated. A few of these may be mentioned as follows: *The War in Europe*, Prof. A. B. Hart (New York, Appleton, 1914, pp. 254); *Why We are at War* (Clarendon

[7] Contributed by C. G. Fenwick.

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Press, 1914, pp. 251), by six members of Oxford University faculty; *The Origins of the War*, by J. Holland Rose (Cambridge University Press, 1914); *The War and America*, by Hugo Münsterberg (Appleton, 1914); *Great Britain and the Next War*, by A. Conan Doyle (Boston, Small, Maynard, 1914), a reply to Bernhardi's *Germany and the Next War; Britain's Case Against Germany*, by Ramsey Muir, of the University of Manchester (Longmans, Green & Co., 1914); *What Germany Wants*, by Edmund von Mach (Little, Brown & Co., 1914); *The Great War*, by F. H. Simonds (New York, Kennerley, 1914); *The Real "Truth About Germany,"* by Douglas Sladen, with an appendix on *"Great Britain and the War,"* by A. Maurice Low (New York, G. P. Putnam's Sons, 1914); *Who is Responsible? Armageddon and After*, by Cloudesley Brereton (Putnam, 1914); *The Clash of Nations, its Causes and its Consequences*, edited by Rossiter Johnson (New York, Nelson, 1914); *The Diplomatic History of the War*, edited by M. P. Price (New York, Charles Scribner's Sons, 1914); *The World War*, by Elbert Francis Baldwin (The Macmillan Co., 1914); *The Evidence in the Case*, by James M. Beck (New York, G. P. Putnam's Sons, 1914), *The Nations of Europe*, by Charles Morris (Philadelphia, John C. Winston Co., 1914); *Deutschland Über Alles, or Germany Speaks*, by J. J. Chapman (Putnam, 1914); *Handbook of the European War*, by S. S. Sheip (White Plains, H. W. Wilson Co., 1914); *Treitschke and the Great War*, by Joseph McCabe (New York, F. A. Stokes Co., 1914); *Treitschke's Lectures on Politics*, translated by A. L. Gowmans (New York, F. A. Stokes Co., 1914); *Germany's Madness* by Dr. Emil Reich, late of the University of Vienna (Dodd, Mead); *The Political Thought of Treitschke*, by H. W. C. Davis (Scribner's); and *Treitschke*, by Adolph Hausrath (Putnams).

Further material regarding the war may be found in a bibliography by Prof. Clarence Perkins in the November *History Teachers Magazine*, and in one on the *European Crisis of 1914*, a list of references on Europe and international politics in relation to present issues, compiled by H. H. B. Meyer (Washington, Library of Congress, 1914, pp. 144).

Official documents relating to the war may be found in a number of the above volumes; and they have also been issued separately by the various governments, the more important being the "White Papers" of England and Germany, the Russian "Orange Paper," the French "Yellow Book," and the Belgian "Gray Paper." The issues of *International Conciliation* for October, November and December (nos. 83, 84, and 85) contain official documents regarding the war. A collection of documents relating to France in preparation for war may be found in

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Guerre de 1914; Documents officiels, Textes, Législatifs et Réglementaires (Paris, Dalloz, 1914).

New editions of recent books revised in the light of the European situation include *Problems of Power*, by W. M. Fullerton (Scribner), first published in 1913, in which the author brings his survey of international politics up to the outbreak of the war; and *The Balkan Wars, 1912–1913*, by Jacob G. Schurman (Princeton University Press), in which President Schurman in a new preface outlines the intimate relations of the Balkan situation to the present war.

A number of the foregoing books on the war are more particularly described in the note by Professor Turner which follows. Attention is also called to the contribution by Professor Spencer in which some of the German ante-bellum literature is considered.

WAR LITERATURE

EDWARD RAYMOND TURNER

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As was to be expected, the war of the nations has already produced an extensive literature, which is increasing rapidly, and bids fair in a little while to become enormous. Much of it is controversial and ephemeral, and some of it is of little merit even for the moment, but there has already been published a number of books which are interesting, informing, and well-written. In such a notice it is not necessary to do more than allude to the various "Papers" which the European governments have issued, which are as yet the principal sources for diplomatic information, or the works of Bernhardi, published some years ago and frequently reviewed, but which opponents of Germany cite to explain a great deal of what has arisen in the present crisis.

A book regarded in England as an answer to Bernhardi is *Germany and England*. By J. A. Cramb, M.A., Late Professor of Modern History, Queen's College, London. Introduction by the Hon. Joseph H. Choate. Dutton, New York, 1914. Pp. xiv, 152. This little book contains the ablest explanation of the rivalry between Germany and England, which is the mighty growth of a modern Germany, righteous and justified from her own point of view, but essentially antagonistic to England who lies across her path. Face to face with Germany's virile militancy, there must be no pacificism or yielding policy, and the author calls upon his countrymen to arm and prepare for inevitable conflict. Notwithstanding that the volume appears to have been put

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together from the lecture notes of the author—who died before the outbreak of the war—the writing is of rare beauty. Throughout the thought is of wonderful depth and power.

A book inferior in power and originality, but which rose to extraordinary popularity with the beginning of the war, is one whose merits and defects had been noticed before the war began: *Pan-Germanism.* By Roland G. Usher, Associate Professor of History, Washington University, St. Louis. Houghton, Mifflin, Boston and New York, 1913. 14th edition, 1914. Pp. viii, 314. In this book is contained one of the best accounts of German aspirations and designs, all of which the author calls Pan-Germanism, together with the opposition of the rival European powers. The account is clear and graphic. The principal defect is lack of cautious statement, and categorical assertion of what is sometimes not even plausible, but more often of what the author may conjecture but cannot possibly know. This defect, however, in the opinion of the reviewer, is not to be weighed against the positive merit of the book.

Less brilliant than Cramb's work, though well-written, is *The New Map of Europe (1911-1914). The Story of the Recent European Diplomatic Crises and Wars and of Europe's Present Catastrophe.* By Herbert Adams Gibbons, Ph.D. Century Company, New York, 1914. Pp. xii, 412. The book is especially admirable because of the intimate acquaintance which the author shows with that part of European politics which centers in Austria, Turkey, and the Balkans, where he has spent much time and made many associations. Nowhere have I seen a better discussion of the questions of southeastern Europe. There are also admirable chapters on the world policy of Germany, the administration of Alsace-Lorraine, the Bagdad railway, Poland, Crete, Albania, and the incidents which led immediately to the war. There are some slight inaccuracies, which may be due to haste, but they are without importance, and do not detract from the excellence of a book which will probably give more information about the causes of the war than any other available.

A book written avowedly for the purpose of assisting people to understand the causes of the war, the character and resources of the belligerents, the methods employed, and the issues at stake, is *The War in Europe, Its Causes and Results.* By Albert Bushnell Hart. Appleton, New York and London, 1914. Pp. x, 254. It is a useful and well-arranged compilation of facts, stated clearly, but without spirit or the reality which comes from intimate acquaintance with the things described.

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It contains some errors and some confused statements (for example, p. 41), but it will probably be serviceable to many readers.

Many writings of controversial character have appeared. *Who is Responsible? Armageddon and After.* By Cloudesley Brereton. G. P. Putnam's Sons, New York and London, 1914. Pp. ix, 104, is an interesting statement from the English point of view, designed to show that the development of Germany from the time of Frederick the Great has tended steadily toward a character and a position which have made inevitable the present world catastrophe. There is admirable description of the excellence which characterizes so many aspects of German life, and of the defects and brutality of its spirit, and also of German weaknesses. Much of the defect, in the mind of the author, arises from the fact that there is in Germany a too exclusively man-made civilization. Mighty issues are at stake: "This is probably one of the great turning-points in the world's history—and the issue may be a great spiritual Renaissance or the return of the Huns" (p. vii).

More fiercely controversial is *The Real "Truth about Germany," Facts about the War.* By Douglas Sladen. *An Analysis and a Refutation from the English Point of View, of the Pamphlet "The Truth About Germany," Issued under the Authority of a Committee of Representative German Citizens. With an Appendix, Great Britain and the War.* By A. Maurice Low, M.A. Putnam's, New York and London, 1914. Pp. x, 272, of which the scope is sufficiently indicated by the title. If the pamphlet against which it is directed was so poorly argued and so loosely constructed as to excite contempt, it must be said that this attempted refutation is in many places neither calm, dignified, nor conclusive, though in the opinion of the reviewer the reply is better, if not more effective, than the argument against which it was directed—not a very difficult task to accomplish.

Representing strongly the German point of view is *The War and America.* By Hugo Münsterberg. Appleton, New York and London, 1914. Pp. viii, 210. The book is an able statement of the conduct of Germany and her ally, and an attempt to influence American opinion in their favor. The thesis is the danger to the civilization of the world which would follow the triumph of Russia, which according to the author is the inevitable outcome of the triumph of the allies. "If Russia wins to-day and Germany is broken down, Asia must win sooner or later, and if Asia wins, the achievements of the western world will be wiped from the earth more sweepingly than the civilization of old Assyria" (p. 103). The story of the destruction of the "thought-people" by

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Asiatics is a very clever piece of writing (pp. 103–107). In many respects the volume is an admirable statement of the case of Germany and a justification of her position; but it is hopelessly vitiated by special pleading and inaccurate statement. According to the author "it has become absolutely clear that the war was started by Russia and France and that Germany was in no way responsible" (p. 210).

Other books discuss interesting problems suggested by the war. In accordance with well-known ideas of the principal author is *War's Aftermath, a Preliminary Study of the Eugenics of War as Illustrated by the Civil War of the United States and the Late Wars in the Balkans.* By David Starr Jordan, Chancellor of Stanford University and Harvey Ernest Jordan, Professor of Histology and Embryology in the University of Virginia. Houghton, Mifflin, Boston and New York, 1914. Pp. xxxi, 104. It is a study founded upon information obtained in Spottsylvania and Rockbridge Counties, Virginia, and Cobb County, Georgia, based on answers given to a series of carefully prepared questions, and designed to examine the truth of Schiller's assertion, "Immer der Krieg verschlingt die Besten." The results, which are interesting but not absolutely conclusive, are supplemented by an account of things seen in the Balkans. The little volume is an able explanation of one of the worst effects of war.

One of the most original and constructive books suggested by the present situation is *War and Insurance, an Address Delivered before the Philosophical Union of the University of California at its Twenty-fifth Anniversary at Berkeley, California, August 27, 1914.* By Josiah Royce. *With an Introduction and Notes.* The Macmillan Company, New York, 1914. Pp. xlviii, 96. Following an idea of Kant, the author sees the explanation of the persistence of war among civilized peoples in what he calls the "dyadic, the dual, the bilateral relations of man and man, of each man to his neighbor," which are "relations fraught with social danger." "A pair of men is what I may call an essentially dangerous community" (p. 30). The remedy, so far as individuals are concerned, must be sought in a triadic group, or a group consisting of a principal, an agent, and a client. This suggests the idea of a "community of interpretation," which, under special forms, has already contributed so much to the progress of civilization, these forms being the judicial community, the banker's community, and last and most important of all, the community of insurance. And developing this thesis, Professor Royce suggests a scheme of international insurance, to be administered by powerful and inviolable trustees, which shall

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insure nations against various disasters, perhaps even war. The book is tentative rather than conclusive: "Its whole present purpose is gained, in fact, if it leads to a serious revision of its own imperfections" (p. xi).

The long standing comment of historical scholars that there was no English translation of the writings of Treitschke attracted little attention until recently, when events gave a prominence to his teachings which they had never before obtained outside of Germany. The lack has been partly remedied. *Treitschke, His Doctrine of German Destiny and of International Relations. Together with a Study of His Life and Work of Adolph Hausrath. For the First Time Translated into English.* Putnam's, New York and London, 1914. Pp. xi, 332, is a translation of the biography written by his friend, and of some of his own more characteristic writings. The wonderful eloquence of Treitschke's style is manifest even in translation, in the difference between the biography and that which he himself wrote. Hausrath's account is a meritorious story of the life of his friend, in which the principal merit lies in the personal touch which his reminiscences allow him to contribute, but it is in many places confused and obscure, and even at its best not to be compared with the wonderfully vivid and suggestive portrait in the third lecture of Cramb. The selections from Treitschke's writings are well chosen for the general reader, particularly those which have to do with the army, with international law, and with German colonization. An explanatory preface is furnished by Mr. Putnam himself.

WHO MADE GERMAN OPINION?[1]

H. R. SPENCER

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More terrible than an army with banners is the "people in arms;" for in these days that people is equipped with deadly weapons—nationalism, ambition, righteous indignation, revenge. The forging of that public opinion has been recognized abroad as a state task and as a responsibility of incalculable importance. If today the neutral onlooker is bewildered by the sight of several public opinions, fired by genuine zeal in behalf of diametrically opposed aims and based on mutually exclusive premises, it is evident that he is not only in the presence of irreconcilable interests, but is also enjoying unusual opportunities for

[1] Bernhardi, Unsere Zukunft; Oncken, Deutschland und England; Oncken, Der Kaiser und die Nation; Rohrbach, Der deutsche Gedanke in der Welt.

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comparative study of that armament process by which this new war-implement, a people in arms, is produced. How and from whom do the peoples get the opinions that make them take up arms? Evidently here is a question of surpassing importance for the statesmanship of the future.

Whoever is constitutionally and internationally responsible for the bringing on of the present war, there is abundant evidence that it is not the Kaiser that is at war, not the Prussian military caste, but Germany. Furthermore the world knows now that German enthusiasm is not born of fear, of desperate defence against an overmastering fate: there is a positive ideal leading her. Her enemies call it aggression. It is not of much importance what she calls it; it is all-important for the world to know what this ideal is. For years, like every other people, Germany has been listening and reading and receiving guidance from those capable of giving it. The titles given in the footnote are presented as samples of the ingredients that thus went to make up that ideal in public opinion; as such they are of immense concern to one seeking to understand the present conflict.

The grim figure of Bernhardi has been made sufficiently familiar, in connection with his prognostications regarding the "Next War." This little brochure "Our Future" was brought out at the price of one mark, twenty pfennigs, for the avowed purpose of making those views accessible to *all* circles in Germany, and it includes comment on events subsequent to the more famous book. The first had been written with the purpose of enforcing upon an "unjustifiably optimistic" people the impending danger of an explosion such as was likely to bring on general war. In this brochure the issue of the Balkan war is recognized as having greatly damaged German prestige, both because of the connection of German officers with the Turkish army, and the altered situation for Rumania and Italy, but especially because Austria is left in an impossible situation regarding Servia, and because "it is scarcely to be supposed that the Triple Entente powers, borne on and impelled by public opinion, would not exploit their lucky situation in an attempt to use force upon Germany." The great crisis of our people requires sacrifice, to "maintain ourselves against a world of enemies, and make ready for a future that corresponds to our greatness and cultural significance." It should in fairness be observed that when he speaks of the Germans as "the real bearers of all modern culture," "as a culture-nation of the first rank, as *the* culture-nation κατ'ἐξοχήν," he is referring to the Germanic races, from whose influence he does not exclude Gaul and Britain and the nations that have grown up on those lands,

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he only reserves an eminent and important, not exclusive position among the Germanic races for the present Germans, "together with the Scandinavian peoples."

This apostle of Treitschke-ism deals faithfully with England and her significance for the Germany of today. To our surprise we are told that England established free trade because she could not dispense with German enterprise; that it is largely German merchants who make the greatness of Hongkong, Shanghai and Singapore. But it is England that blocks Germany's path to colonial dominion and the fulfilment of legitimate ambition for settlement-colonies, where German emigrants may found centers of German culture, and not be mere culture-fertilizer for the enrichment of other empires. England's great world-competitor, it seems, is to be the United States, and looking to the future wars for Canada and Panama she must have safety from rear-attacks, which requires destruction of the German fleet, "the Alpha and Omega of English policy." Could England and Germany come to an understanding it must be on this basis: England's renunciation of the world-hegemony that she now claims, a "practical, not only theoretical recognition of Germany's equal right beside Great Britain," also a few trifling corollaries such as a free hand for German expansion on the Continent, for a confederation of Middle Europe or a war with France, a redistribution of North Africa in favor of Italy and Germany, no hindrance to Austrian policy in the Balkans or to German economic activity in Nearer Asia, and "finally no more working against German sea-power and German acquisition of coaling-stations." German-English relations adjusted on such a basis would assure the peace of Europe, would be a powerful counter-weight against the growing influence of America, and would afford a strong protection against the less civilized East European Slav-dom, and the yellow millions of the Far East.

But he finds absolutely no chance of England's seeing the light; she has deliberately assumed this attitude against Germany, her whole foreign policy gets its orientation therefrom; she has taken on obligations to France and Russia; she has distributed her fleet and supporting stations with Germany in view, her whole community is resolved to maintain British supremacy on the sea, and believes that it is because of the hostile disposition of the German nation. Worse yet, England's interest is to bring on the general war *soon*, before the completion of the Kaiser William Canal, before the race in fleet-building exhausts her, before the Italian and Austrian fleets become inconveniently strong. Hence she desires to involve Austria and Russia in the Balkans, isolate

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Germany, and thus get all the trumps into her own hand, meanwhile setting forth her policy "as a disinterested and unselfish one!"

Very different is Professor Oncken, a student of modern history, whose scholarly authority goes far beyond Germany and whose "objectivity" has been recognized by his inclusion among the authors of the Cambridge *Modern History*. Any relevant utterance of his therefore may be entitled to more weight, though it will have less wide reading than those of the chauvinist cavalry officer. On the 25th anniversary of Kaiser William's accession Oncken addressed the university community of Heidelberg on "The Emperor and the Nation." The man, the ruler, the statesman were very acutely analyzed with especial reference of course to his political environment as it has developed since 1888. He declares it to be the characteristic historical position of William II that he widened Germany's view, beyond the Continent to include the world. He "let the fresh wind of the salt sea, of colonial adventure, of world-commerce connections blow into the close atmosphere of a people living thickly crowded together." This "new course" brought new problems. "The grandson of Queen Victoria, the admirer of English maritime greatness and of the English manner of life, when he raised Germany to a real naval power, could not help arousing against us the excited opposition of England." Amid diverse criticisms from radical and nationalist parties even at home he has pursued his course; "we are in sure and uninterrupted progress, and it is in good degree the work of the Kaiser."

The other book of Oncken's is founded on a lecture delivered early in 1912 to a section of the Navy League. In the historical relations of England and Germany he founds a powerful argument for strengthening Germany's force—not the fleet as his hearers doubtless desired, but the army, a consummation that was reached the following year under the stimulus of the Balkan war. He holds that by a natural course of evolution the German nation has arrived at a position where, of all foreign affairs, the relation with England has become the vital question. For centuries it has been a fixed habit with England to maintain the balance of power on the Continent; by devising coalitions here, by giving assistance or sowing dissensions there, to prevent any continental hegemony that should neutralize the advantage of her insular position, should possibly close the Continent to her trade, should even attack and attempt to reduce her to insignificance. In pursuit of this policy England has long been in special relations with Germany, maintaining a tradition of alliance with Hapsburg against Bourbon, at other

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times throwing her support to the Hohenzollern instead, combining with both Hapsburg and Hohenzollern against the French Revolution and Napoleon. In these alliances however he is at pains to point out that the German invariably had to ply the laboring oar, acting as the Englishman's soldier and guardian, and was sometimes (for example in 1711 and 1762) left outrageously in the lurch. Since Waterloo there has been little occasion for this policy of defence against continental hegemony, but to the old conditions requiring predominant sea-power for insular defence there was now added her new colonial empire of unprecedented spread, "founded ever more exclusively on the one condition of mastery of the sea."

The new imperial Germany was of itself no menace to England. For want of sea-power it was harmless. On the other hand the age-long. Franco-German hostility was as good as free life insurance to England, it "allowed English policy for the time even the luxury of complete isolation without danger." But after the period of supposed German "satiety" came Bismarck's colonial expansion of the '80s, in regions which England would fain have regarded as spheres of her own future interest. Simultaneously tension with France regarding Egypt and with Russia regarding Afghanistan and India was at its height. "Only an incomparable conjunction of world politics, constructed in masterly fashion by Bismarck, threw into our lap at that time German East and Southwest Africa, Kamerun and New Guinea." "The German colonial policy is not an outcropping of chauvinistic and aggressive imperialism, it does not rest on the desire for profits of a capitalistic imperialism, it is simply the expression of a social-economic necessity." "In the service of this colonial policy we have created a fleet." But other people had other views. England saw "the mightiest continental power creating a great fleet; and remembering the systematic preparation for the wars of 1866 and 1870–71, she asked, against whom are the Germans preparing the fleet?" Hence, he concludes, founded in part on her own guilty conscience, England developed her Germanophobia, her dread of invasion, of a new hegemony, to be thwarted and crushed if possible by the customary measures. There followed the general liquidations with France and Russia, the alliance with Japan, the attempts to tamper with Constantinople and Prague and Pest, the agreement of parties at home, of Grey's foreign policy with Lansdowne's, the conversion of the whole Foreign Office and diplomatic service to King Edward's doctrine of isolating Germany.

"It was the Moroccan crisis that brought home to us the reality

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of this new and successful system." Kiderlen-Waechter's play was rightly directed to the attainment of compensations in equatorial Africa; but in order to win he had to demand a share of Morocco instead, and let loose the pack of Pan-Germanists baying for Agadir. To the latter the outcome was a bitter disappointment, and the game was a risky one throughout. "But one thing may not be disputed: England's intervention diminished our chances of profit say by one-half, not out of special ill-will, but in fidelity to the fundamental idea of her policy inaugurated in 1904." We (Germany) experienced the pressure of an intervention which essentially weakened our pressure upon France. "In all parties and groups of the German people (including the Social Democrats) the feeling is sharpened that that must not happen again." Pacifist missions of clergymen, parliamentarians and journalists are vain: "I doubt if any groups or parties remain among us ready to enter into the service of the pax Anglica." "We must bethink ourselves of a more effective means of persuasion: that is the strengthening of our armament."

Professor Oncken's reasons for urging that the substantial increases be in the army rather than in the fleet have to do rather with English than with German public opinion. A scheme for naval aggrandizement would require a long time for realization, but its very publication would immediately start England to laying down two cruisers for every one of ours. "There is a maximum of fleet strengthening—on that we give ourselves no illusions—which might hurry England immediately to a declaration of war," a result embarrassing to us in view of the present state of Heligoland and the Kiel Canal. But of most importance is this consideration: an important body of radical opinion in the British parliament and people has been tending toward rebellion against Sir Edward Grey. "This opinion figures often as humanitarian-sentimental," the pro-Boer dislike of reaching mastery by crushing the weak. But there is also grave questioning if Grey is not paying too dear for England's opposition to Germany alone; reference is made to Persia and Mongolia; "He endures and submits to everything except a peaceful rapprochement with Germany." And what return has this policy brought? "Germany's deep resentment, chronic danger of invasion, an immense increase of fleet burdens and a never ending bill of expense in Asia." "Louder and louder sounds the cry G. M. G. (Grey must go)." . . . . "Nothing would call out so quick a *reversal* of this rebellious feeling, nothing would bring before the English nation so true a justification of the policy of Sir Edward [a consummation eminently undesirable, from Germany's point of view]—as a German fleet bill on the

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grand scale at this time." On the other hand everything recommends a strong increase of the army. It is easier to bear financially, and could be realized almost immediately. But also it involves the best assurance against English aggression, by holding France in check, cooling the revanche-ambition. But even more directly. "We know that the English in case of war think seriously of the application of their military force on the Continent, across the sea that they rule; we know their plans to land in Belgium, and if possible, allied with the French, fight against us another Waterloo." To increase Germany's army means not to raise England's panic, but to reduce her ill-will. "The inclination to negotiate is on the increase in English public opinion. Let us take care to strengthen it, with foresight and emphasis. . . . . This means [army-increase] is the one adapted to weaken our world-opponent in the place most dangerous for us, the system of his continental balance of hostile forces. It is the means that serves the ultimate purpose of all policy,—peace."

Read in late 1914 this seems like bitter irony, but it is indubitably one of the elements on which ante-bellum German public opinion was fed. Its contradictions are obvious, but on one point there is certainty, *si vis pacem, para bellum;* with what result the world now knows—and condemns. If a generation of Germans has been taught to worship force as the highest reason, victorious expansion as national glory, Bismarckian diplomacy as statesmanship, what shall the harvest be, from such sowing of the wind?

The topic proposed by Dr. Rohrbach is "The German Idea in the World:" "the moral ideal substance of Germanism as formative power in the present and future of the world." "There is on this basis [moral ideal] a continuing process of selection of the fittest among world peoples, who succeed in realizing a bit of human progress by stamping their national ideal upon the world." The author is a man of very wide and long continued travel (in Africa, Turkey and China) and is a member of the teaching body of the Berlin College of Commerce. Publication at one mark, eighty pfennigs, makes the book available for universal reading.

The real aim of the book is not, as its title might suggest, an analysis of those elements of civilization that are characteristically German, but rather to put the crucially important question, "Is the Anglo-Saxon type destined to attain sole mastery in those parts of the world where development is still in flux, or will so much room still remain for Germanism that it also shall appear as a determining factor of future civilization, here and beyond sea? Furthermore we must make sure (1) what

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we are in a position to do in order to elevate the German idea in the world, (2) what liabilities burden the nation, that must be reckoned with politically?" A ringing challenge is made to England, in full, admiring, frequently expressed consciousness of the worthiness of her steel, German traits that hinder are pitilessly exposed, and the sum of it all is an inspiring appeal for self-sacrificing effort, not in a combat of arms, but in fair, constructive, competitive service to civilization, by rival but mutually tolerant states.

National *growth* is shown to be a question of life or death, not necessarily a matter of boundaries, but one of world-intercourse, of trade with colonies or other peoples, of markets for the sale of manufactures, for the purchase of food. And it must be free growth; not a colonial empire and world-trade by England's grace, but self-maintaining, self-defending, not presumptuous but proportionate to Germany's significance and achievements. If antagonists choose to fight her in order to maintain monopoly, that is against Germany's desire; it is unnecessary from the world's point of view, but the possibility must be reckoned with—and prepared against.

Many disadvantages under which Germany suffers in the competition are described, some historical and external, such as Germany's preoccupation with religious wars and attainment of national unity while other states had safe leisure to acquire world-empire and consolidate the power for keeping it: some internal and present and therefore fit to be preached against, such as extreme divisiveness in party and church, defective capacity for coöperation in industry; caste-pride and officialism, exclusion from political power of great social forces by the proscription of the social democracy, privilege to land-ownership, monopoly of the diplomatic service by the nobility; Prussian "brutality under the mask of snobbish smartness;" parochial narrowness of view, inability to think and act on the world scale as the English do, niggardliness in colonial investment and support of missionary effort, so efficient an instrumentality in spreading the Anglo-Saxon idea in the world.

As to colonies the author has good hopes, and from long residence and observation brings many sage bits of advice: there is to be no such rooting out of the aborigines as in America and Australia; the black is indispensable to the white, he is to serve him, and civilization requires that his resources be exploited by those who know how, with not too nice regard for native land-titles; the colonial administration is learning by experience, but there should be less Prussian bureaucracy, more elastic

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self-government; South Angola is to become German as soon as Portugal comes to the point of letting it go, and it is to be expected that (not by force but by agreement) there will be still further revision of African boundaries in Germany's favor. He has a lively appreciation of the significance of such a frontier to the nation's life, of England's advantage, long enjoyed, from a considerable flow homeward of persons experienced abroad, soldiers, missionaries, merchants, officials, the national vision thereby sensibly and incalculably widened.

One-fourth of the book is taken up by the chapter on "Our Foreign Policy," which however, takes the form of an outline of recent events and an account of the other powers in their relations to Germany. It is a drama of contest with fate: "the fate of Germany is England": but the heavy villain of the piece turns out to be King Edward VII. This rival of Bismarck must needs "encircle" Germany with his alliances, and therein he is only meeting England's need, felt with increasing strength during the last decade and a half, to maintain her supremacy at sea against the one who challenges it. Working on the grandiose scheme of an empire stretching unbroken from South Africa to Australia, the Cape to Cairo railway completed by an annex from Cairo to Calcutta (!), King Edward recognizes the German-Austrian-Turkish entente and proceeds to create one to match it—Anglo-French-Japanese-Russian. Ready to buy German East Africa, to recreate Mesopotamian civilization, to divide up Persia, to bestow the califate of the Moselms on some British vassal prince, he would rearrange the scheme of the Bagdad railway so as to make it protect Egypt against Turko-German attacks (though from such arrangement Turkey would reap little economic advantage and much political detriment), and he would even risk a crisis by arranging with Russia an operation which should dismember Turkey, setting up an autonomous Macedonia. These plans miscarried by reason of the two great events of 1908, Turkey's revolution and regeneration and Austria's annexation of Bosnia, in which premature crisis Russia, yielding before the Kaiser's "shining armor" was tried and found wanting as an element of nefarious British policy. England had administered to her in 1904–05 a Japanese "cure"; it had taken only too good effect, so that her convalescence was now found to be still far from complete.

Competition in naval armaments naturally occupies the author's deep attention, and he constructs a fascinating argument on plausible evidences: its soundness depends on their real validity, and the comparative weight to be apportioned to them, all of which we are not yet

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in a position to estimate conclusively. It runs somewhat as follows: Germany's phenomenal industrial and commercial growth have not only required corresponding development of a fleet to protect them, but have occasioned England's fear that her *supremacy* is threatened; the First Lord of the Admiralty assures Germany of England's peaceful intentions, but tells her that England's fleet is *necessary* to her existence, while Germany's is only a luxury (possibly tempting its possessor to aggressive use); but for evidence against these peaceful assurances the author cites witnesses, from Monck and the elder Pitt down to Arthur Lee, the *Army and Navy Gazette*, the *Morning Chronicle*, and the *Saturday Review*, all supposed to show Britain's desire to attack Germany's fleet (perhaps unawares, as at Copenhagen in 1807) at any rate before it is too strong, capture her trade, enriching every Englishman thereby, turn over Germany's continental possessions to Russia and France to seek their compensation; and thereby ensure the pax Anglica. *Germania est delenda.* The author does not suppose that this chauvinism really constitutes English opinion, but he recognizes its existence and influence as a factor, along with Churchill's peaceful assurances, and protests that Germany cannot live on such balance of factors in a foreign nation's opinion. England lets go without protest Roosevelt's desire for an American navy "second to none," but is aggrieved at Germany's naval preparation, and insists on laying down two keels to one. "We do not think of disputing the superiority of the English fleet to ours. . . . . But at that moment when by 'supremacy' they understand that our vital interests in whatsoever part of the world . . . . .must yield to theirs, they compel us to fight them for our future, and that means for our national existence. If they would prescribe to us how far we may go in the world to spread our national ideal we should be cowards and fools to regard this prescription as binding for us without an appeal of arms. . . . . What we need, and what we must have under all circumstances, with or without the good will of England, is a fleet of such strength that if England attacks, even in case of an immediate favorable outcome she risks her position on the sea. We must have so many ships that in all human probability even if England has conquered us, she will by her losses have given up her superiority over the other sea-powers still at hand. No English policy can let it come to that." From the German standpoint this is nothing but proper defense; it gives opportunity to both countries: "If the English will not admit that, but maintain their 'supremacy' in the sense of absolute superiority, even for attack, they show therein

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that they are not willing to allow us political and national equality in the world. It is they, not we, who turn the screw of naval armaments higher and higher."

Military conquest is held to be no part of the German idea: if it were, that idea might be more easily communicated to the mob; but for practical and moral reasons that is out of the question. Germany is seeking higher, more real values. There is plenty of room in her colonies, in world-commerce, and especially in countries just now opening to western civilization, in the peculiar circumstances of Turkey and China, for peaceful realization of the German nation's task, "to permeate those parts of the world accessible to us with the spiritual meaning of our national ideal." England and Germany may share side by side in conquests of peace.

If Germany deceived herself by paying too much attention to what is only a portion of English opinion, if from a reading of striking but irresponsible and misrepresentative forth-puttings in the press she has imagined an England monstrously unlike the real, a mere hideous caricature, we may draw the obvious conclusion that nations' judgments of each others' purposes and ideals are subject to heavy discount before they can be used as foundations for policy; but equally necessary is it in the present case that Americans do not deceive themselves into thinking that Treitschke created German opinion: it is a very various compound, including among many other elements its Rohrbach as well as its Oncken and Bernhardi.

DECISIONS OF STATE COURTS ON POINTS OF PUBLIC LAW

Initiative and Referendum. State vs. Superior Court. (Washington, Sept. 21, 1914. 143 Pac. 461.) The determination of local officers that signatures attached to referendum petitions are genuine, is the decision of a political question and not reviewable by the secretary of state, to whom such determination is to be certified. The review by the court of the action of the secretary of state is confined to jurisdictional questions. A number of the legislative provisions regarding forms of petitions (number of names on each sheet, etc.,) are held to be directory only.

Initiative and Referendum. State vs. Osborn. (Arizona, Sept. 18, 1914. 143 Pac. 117.) Courts can not restrain by injunction the

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submission of a measure by the initiative upon the ground that the act if adopted would be unconstitutional.

Delegation of Power. Cutsinger vs. Atlanta. (Georgia, Oct. 3, 1914. 83 S. E. 263.) An act is not unconstitutional because it leaves the granting or refusing of a license to conduct a hotel or lodging house to the discretion of the municipal council without describing the bounds of such discretion, since the legislature contemplates the exercise of a reasonable administrative discretion, and an applicant for a license may seek the aid of the court under proper circumstances. Upon proper allegations the court may by injunction restrain the arbitrary exercise of discretion. The opinion fully discusses the law as to unregulated discretion.

Delegation of Powers. Commonwealth vs. Fox. (Massachusetts, Sept. 10, 1914. 106 N. E. 137.) It is competent for the legislature to vest in the police commissioner of a city power to designate streets or sections of the city wherein peddlers may exercise their calling; also to limit hours and prescribe other regulations for the plying of their vocation.

Statutes. Form of Enactment. Commonwealth vs. Illinois Central R. C. (Kentucky, Nov. 10, 1914. 170 S. W. 171.) An act is unconstitutional which omits the enacting clause prescribed by the constitution.

Statutes. Title. Adams vs. White Lead & Color Works. (Michigan, July 25, 1914. 148 N. W. 485.) The term "accident" in a workmen's compensation act does not apply to occupational diseases. If held to apply to occupational diseases the provision would be invalid as not being within the scope of the title ("providing compensation for accidental injury or death of employees.")

Statutes. Title. People vs. Quider. (Michigan, Oct. 15, 1914. 149 N.W., 1.) An act "relative to the loaning of money and prescribing rates of interest, penalties and forfeitures for violations, etc.," which also regulates in detail the business of pawn brokers and provides for issuing search warrants for stolen property believed to be in a pawnshop, covers more than one subject and does not express the subject covered within the title and is therefore unconstitutional.

Statutes, Proof of. Frederick vs. Morse. (Vermont, Oct. 14, 1914. 92 Atl. 16.) Statutes of other states should be proved by the production of the statute itself. If oral evidence is admissible (the court inclining against this view), it must be the evidence of a properly qualified person and evidence of his qualification must be brought forward.

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Vested Rights. In re Grand Boulevard, etc. (New York, Oct. 24, 1913. 106 N.E. 631.) The legislatures may not provide that upon the filing of a map discontinuing public streets, a lapse of six years thereafter shall extinguish private easements of abutting owners and their right to compensation for the loss thereof. The statute does not provide for notice of the filing of the map to the owners, and some notice is essential to the maintenance of due process of law.

Civil Rights. Commonwealth vs. Karvonen. (Massachusetts, Oct. 23, 1914. 106 N.E. 566.) The Massachusetts act of 1913 forbidding the carrying in a parade of any red or black flag or any banner with an inscription opposed to organized government, is constitutional. The court quotes from Webster's Dictionary that historically a red flag has been a revolutionary and terroristic emblem, and from the Century Dictionary that a red flag is associated with blood or danger, and thinks that the legislature was justified in regarding such a flag as a symbol of ideas hostile to established order and the display of it as likely to provoke turbulence.

Civil Rights, Privileges and Immunities. Sacramento Orphanage vs. Chambers. (California, Sept. 26, 1914. 144 Pac. 317.) The legislature has no power in appropriating state money to institutions for orphan children, to withhold the benefit of such appropriation from children whose parents have not become citizens of the state. If the child has been born in the state and its conditions of residence are equal to those of other children, the status of its parents may not be made a basis for discrimination.

Police Power and Civil Remedies. Memphis Cotton Oil Co. vs. Tolbert. (Texas Court of Civil Appeals, Nov. 7, 1914. 171 S.W. 309.) Workmen's compensation act of Texas held constitutional. If the insurance provisions of the act are invalid they can be struck out and the rest of the act will stand.

Police Power. Labor Legislation. People vs. Solomon. (Illinois, Oct. 16, 1914. 106 N.E. 458.) An act requiring washrooms to be provided by owners of mines, mills, shops or other businesses in which employees become covered with smoke, grime, etc., is a valid exercise of the police power. A similar act passed in 1903 for coal mines alone had been held unconstitutional as class legislation (Starne vs. The People, 222 Illinois 189).

Police Power. Labor Legislation. State vs. Prudential Coal Company. (Tennessee, Oct. 31, 1914. 170 S.W. 56.) An act prescribing the payment of wages at stated intervals which makes the viola-

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tion of the act a misdemeanor punishable by fine, is unconstitutional, since by operation of general law upon failure to pay the fine imprisonment would be imposed. The act violates the provision of the constitution that the legislature shall pass no law authorizing imprisonment for debt in civil cases.

Regulation of Business; "Blue Sky Laws." Ex parte Taylor. (Florida, July 8, 1914. 66 So. 292.) An act to regulate sales of stock and other securities by investment companies, is not unconstitutional because it authorizes certain examinations and findings by the comptroller and attorney general, and vests in them the power to grant or refuse to grant or revoke permits, all such powers being subject to judicial review whether so expressed in the statute or not.

A "Blue Sky" law of the State of Iowa was declared unconstitutional by the federal district court on July 6, 1914, (W. R. Compton Company vs. Allen, 216 Federal 537), while an act of Arkansas was sustained by the federal district court in that state on October 15, 1914. (Standard Home Company vs. Davis, 217 Federal 904.)

Municipal Corporations. Municipal Trading. Union Ice Co. vs. Town of Ruston. (Louisiana, May 25, 1914. 66 So. 263.) Under constitution, art. 224, the taxing power may be exercised by municipal corporations under legislative authority for purposes strictly public in their nature. Held that the construction and maintenance of a municipal ice plant by a small city operating water works and electric lighting is not strictly a public activity, and therefore can not be sustained. The court reserves its opinion as to the validity of the exercise of such power if it were shown that ice can be produced so cheaply in connection with the town electric light plant that it may be classed as a by-product.

Mandamus. State vs. The Board of Trustees, etc. (Wisconsin, Oct. 27, 1914. 149 N.W. 205.) Where the legislature has appropriated a sum of money for additional buildings the determination of a board of trustees of the institution that the construction of such building should be delayed, the present facilities being for the time adequate, will not be disturbed by issuing the writ of mandamus.

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BOOK REVIEWS

The Validity of Rate Regulations, State and Federal. By ROBERT P. REEDER, of the Philadelphia Bar. (Philadelphia: T. and J. N. Johnson Company, 1914. Pp. ix, 440.)

This volume is a critical examination, in their present state, of the doctrines of constitutional law involved in rate regulation. As the chapter headings suffice to indicate ("The Commerce Clause," "The Distribution of Governmental Powers," "The Due Process Clauses"—2 chapters, "The Equal Protection Clause," "Just Compensation," "Impairment of Contracts," "Preferences to Ports," "Limitations upon Federal Judicial Power"), the work is one to interest not only students of the more technical problems, but also, and indeed especially, students of constitutional law in general. It may be added that both classes of readers will find the work well-written, exceedingly acute, and thoroughly documented. Upward of 1700 decisions, most of them of comparatively recent date and the great majority from the national Supreme Court, are cited in the footnotes, with precision, pertinence and unusually accurate knowledge of their content and bearing. A like thoroughness of acquaintance is also shown with recent monograph material, and an admirable disposition to acknowledge credit where it is due.

Nearly a third of the volume deals with the due process of law clauses of the Fifth and Fourteenth Amendments. In fine, Mr. Reeder squarely challenges that view of this clause which, by imparting to the term "law" in it a transcendental meaning, makes it generally restrictive of legislative power, and (essentially) of legislative power alone; and in the end he invites the Court to reconsider its position in this reference and to apply the Fifth and Fourteenth Amendments henceforth in their original sense.

Confined to the case of the Fifth Amendment, this criticism is entirely correct historically. Yet the heeding of it by the Court would, so far as rate regulation is concerned, produce but negligible results, for the Fifth Amendment also provides as against the National Government, that private property shall not "be taken for public use without

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just compensation;" and, in judicial theory, the public regulation of railroad rates is based on the doctrine that the property of companies whose charges are regulated is devoted to a public use, for which, accordingly, just compensation is due, to wit, in the form of reasonable returns from the property so devoted. But also the admission of the same criticism with reference to the Fourteenth Amendment would be similarly resultless since, as Mr. Reeder himself appears to concede, the Equal Protection Clause of that Amendment standing alone, would afford a sufficient basis for judicial supervision of rate regulation by the States.

However, it cannot be admitted that applied to the Fourteenth Amendment, the criticism stated is valid. In this case Mr. Reeder relies largely on the usus loquendi of the Fifth Amendment. If, he says, the Due Process Clause of the Fourteenth Amendment, controls the State in the execution of its power of eminent domain, then why was the Just Compensation Clause inserted in the Fifth Amendment? The answer is furnished, of course, by the history of the Due Process Clause itself. When this clause was first inserted in the older amendment, it was not thought to be restrictive of legislative power in any sense, but by 1868 the fact was quite otherwise. Not only had the Supreme Court treated the clause as restricting, Congress' choice in the field of adjective law, but a considerable proportion of that Bench had also treated it as securing certain substantive rights. The same tendency moreover was also widely prevalent among the State judiciaries. But what is most important of all, perhaps, the newer view had received definite ratification from Sedgwick in his volume on Statutory and Constitutional Interpretation and in the first edition of Cooley's Constitutional Limitations. Mr. Reeder's demand, then, that the Court should henceforth construe the Fourteenth Amendment in accord with its original intention, seems to proceed from a mistaken view as to what that intention was. But the debates in Congress on the Amendment do not leave it open to doubt that its framers intended to impose upon the States at least as serious restrictions as those already existing against the National Government in the first Eight Amendments. True, a Supreme Court that had been bred in the States-Rights tradition, at first arbitrarily ignored this intention, but that fact is hardly to be urged against its later repentance in response to a different stimulus. Neither can it be seriously contended that the efforts of the Court to supervise State railroad rate regulation have, on the whole, worked counter to the public good.

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Setting the multiplicity of the centers of legislative power in this country over against essential unity of its commercial, transportation and investment interests, one can scarcely question that the local governments ought to be kept within at least as strict bounds, when dealing with these interests, as is the national legislature.

And it is with like considerations in mind that one should weigh Mr. Reeder's criticism of the doctrine established in Cooley vs the Board of Wardens of the Port, that Congress' power over interstate commerce is within a certain sphere an exclusive power. Apparently this criticism ensues from the notion that the doctrine in question comprises from the point of view of the original intention of the Constitution, an unwarranted shackling of State power. The fact, however, seems to be the exact contrary. Writing Cabell in 1829, Madison declared that the grant of power to Congress "to regulate commerce among the several states . . . was intended as a negative preventative provision against injustice among the States themselves;" and words spoken on the floor of the Philadelphia Convention confirm this testimony. Actually, then, if we are to assume Mr. Reeder's position that the power to regulate commerce remains invariable even in the presense of variable subject-matter, the branch of the rule laid down by the Court in the Cooley case that most legitimately invites historical criticism is not that which asserts the exclusiveness of Congress' power in certain cases, but that which recognizes in other cases a concurrent State power over commerce among the States. Nor again, can it be easily questioned that in preventing an accumulation of local legislation calculated to block the advance of national power and of private interests reposing on the strength of such legislation, the Court has shown real statesmanship. Moreover, today the question has become largely academic. For not only has congress within the last few years taken actual possession of a goodly portion of the field of power that had been kept vacant for it by the Court, but the more recent formula of the Court classifies such State laws as are sustained, despite their incidental operation upon interstate commerce, as having been passed by virtue of the "police power."

My final criticism has to do with Mr. Reeder's evident assumption throughout his opening chapter on the Commerce Clause, that the distinction between interstate and intrastate commerce sets the same absolute barrier to the power of Congress that it does to that of the States (See especially pp. 38–39). This is a mistaken idea. Marshall recognized in Gibbons vs. Ogden that the National Government

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could reach the purely internal commerce of the States for national purposes, and in the recent Minnesota Rate cases, which Mr. Reeder cites many times, the Court explicitly invites Congress to assume the task of regulating intrastate rates so far as may be necessary and proper to make good its power over interstate rates; and the still more recent decision in the Shreveport Case recognizes that Congress has already to some extent delegated its power in this reference to the Interstate Commerce Commission. Everyone must recognize that interstate and intrastate transportation are today processes so inextricably intertangled as often to be distinguishable only by the most transparent fiction. In view of this fact, it seems not unlikely that the day is near at hand when congress will boldly take over the regulation of, at least, all freight rates; and Justice Hughes' opinion in Simpson vs. Shepard strongly indicates that the Court is prepared to support the national legislature in such action.

The principal criticism then of Mr. Reeder's volume must be of a somewhat too rigidly maintained legalistic and States-Rights bias. Despite this fact the volume is a distinct contribution, both from the view of students of the matters with which it deals, and also from that of the advancing reconstruction of our constitutional law.

EDWARD S. CORWIN.

The Confederation of Europe: A Study of the European Alliance, 1813–1823, as an Experiment in the International Organization of Peace. By WALTER ALISON PHILLIPS, M.A. (London and New York: Longmans, Green, and Company, 1914. Pp. xv, 315.)

This volume is a reproduction of a course of lectures delivered at Oxford in 1913. The author states that the object and scope of the lectures is not purely historical: "Their intention is, briefly, to illustrate from a particular period of history the problems involved in the practical application of the principles of international law, and my hope is that they may serve a useful purpose in helping to create a sound opinion upon questions which are too often discussed from a standpoint wholly out of touch with the realities of life." The author undertakes to show that the modern peace programs contain in them little that is new, but that "their genealogy can be traced back at least three centuries to the Grand Design of Henry IV of France. In dealing with the period between the Congress of Chaumont in 1813 and that of Verona

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in 1822 we shall often meet, in diplomatic correspondence and works of publicists, the phrases 'General Treaty,' 'Universal Union,' 'International Police.' " The volume necessarily includes a full discussion of the idealistic proposals of the Emperor Alexander I. Mr. Phillips attributes more influence in the formation of Alexander's designs to La Harpe, under whom he studied the works of Rousseau, than to the Baroness Von Krüdener, of whose influence over his career historians have made so much. In this connection he quotes at length the instructions of September 11, 1804, to Novosiltsov, the Czar's envoy to London, written more than ten years before he met the Baroness. He considers these instructions the connecting link between the Holy Alliance and the peace projects of the seventeenth and eighteenth centuries. One passage from these instructions is indeed remarkable as an anticipation both in language and thought of the plans of present-day pacifists. (See p. 34).

Mr. Phillips also attaches far more importance than the general historians to the treaty of Chaumont of March 1, 1814. He says that this treaty is the "foundation upon which the Confederation of Europe in all its subsequent phases ultimately rested." One of the articles declared that the present treaty of alliance has for its object "the maintenance of the balance of Europe, to secure the repose and independence of the powers, and to prevent the invasions which for so many years have devastated the world."

The author makes constant reference to the difficulty experienced by the allies in managing and restraining the Emperor Alexander. Thus, when the allies were about to enter Paris after the first overthrow of Napoleon, Castlereagh, who was present, wrote to Lord Liverpool that "the Emperor has the greatest merit, and must be held high, but he ought to be grouped, not made the sole feature for admiration." The subsequent efforts of Castlereagh to "group" the emperor are narrated at length. In fact, the volume sets forth Castlereagh's policy with great clearness and exalts him to the front rank of the great statesmen of his day. Mr. Phillips claims that all Canning's policies were not only foreshadowed by Castlereagh, but that "Canning merely took up and developed the policy of Castlereagh."

The writer assumes an intimate knowledge on the part of his readers of the various treaties of alliance to which he refers, but the international politics of the period with which he is dealing are so very complex that he is sometimes a little difficult to follow. For instance, he fails to point out clearly the difference between the Grand Alliance and the Holy

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Alliance, a distinction which should always be kept clearly in mind. It was not until the congress of Verona that the Holy Alliance assumed any importance, and its importance from that time on was due to the fact that in the preamble of the treaty of Verona the powers declared that treaty to be merely a revision of the treaty of Holy Alliance. Wellington's protest and withdrawal from the congress of Verona marked the final breakup of the alliance which had been formed against Napoleon. Henceforth England pursued a separate course, but as Castlereagh had foretold, the alliance had "moved away from England" rather than been deserted by her.

The chapters on Spain and her colonies and on the genesis of the Monroe Doctrine have an important bearing on the history and present policy of the United States. The author makes the interesting statement that both France and Russia wished to invite the United States to take part in the proposed conference of European powers which was to discuss the relationship between Spain and her revolted colonies. This suggestion seems to have come from Richelieu, who said the object was "to attach the United States to the general system of Europe and to prevent the spirit of rivalry and hatred establishing itself between the old and the new world." In reply Wellington stated that it was extremely doubtful whether Spain would accept the mediation of the five powers, and that without such acceptance it was useless to approach the United States. There is nothing particularly new in his discussion of the origin of the Monroe Doctrine. He seems to think that the Monroe Doctrine, which was originally a doctrine of non-intervention, has been converted into a principle of active intervention by the United States for the maintenance of order on the American continent. He points out that the effective working of an international federal system like the European alliance demands a far greater uniformity of political institutions and ideas among the nations of the world than at present exists, and he thinks that President Wilson's action in regard to Mexico foreshadows a demand on the part of the United States that the constitutional organization and political principles of every American state shall conform to those of the United States.

So far as the general peace movement is concerned, the tone of the book is decidedly pessimistic. The author's comparison of the European Confederation of 1813–1823 with the modern proposals for an international court is, it seems to me, subject to many qualifications. Owing to the wholly anomalous condition into which Napoleon had thrown the states of Europe, the Confederation had necessarily to deal with the

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internal affairs of the several states. The congresses that were held from time to time were objected to by Canning as "congresses for the government of the world." They were concerned not with generla questions of international law so much as with the internal status of States. What the well-informed and rational peace advocates of today hope to see established is not a congress for the government of the world, but an international court which will settle those questions which are capable of judicial settlement and whose decisions will form the basis of a body of public international law.

JOHN H. LATANÉ.

"L'État et les Fonctionnaires: Études Economiques et Sociales, Publiées avec le concours du Collège libre des Sciences sociales." By ALEXANDER LEFAS. (Paris: Giard et Brière, 1913. Pp. lxix, 397.)

This book is another addition to an already extensive literature dealing with the French civil service and especially with the miserable condition of the functionaries. For many years they have loudly complained of their meager pay, the insecurity of their tenure, and the abuses of favoritism and arbitrariness on the part of their hierarchical superiors in respect to appointments, promotion, and discipline. They demand the enactment of a law which shall guarantee them against these abuses; and to enforce their demands upon the government they have organized themselves into numerous and powerful associations. In some cases they have indeed gone further and formed syndicates (legally a very different kind of organization from the association) and have insisted upon the right to negotiate with the government, to dictate the terms of a contract with it and even to strike, following the practice of syndicates among laborers. By reason of the large membership of these organizations and the somewhat revolutionary and anarchistic character of the syndicates the government has felt obliged to take action for its own protection. Generally, it has recognized the lawfulness of the associations but except in some rare instances, it has forbidden the organization of syndicates and has dissolved those that were formed.

In respect to the matter of salaries, the complaints of the functionaries are well founded and popular sympathy is generally on their side. With a few exceptions their "traitements" are miserably small, the average for the entire body of state employees scarcely exceeding $500 per year. For many thousands indeed the salary does not exceed $250 per year,

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the scale being substantially what it was fifty years ago. Their small income undoubtedly accounts for the fact that the size of families among functionaries is smaller than that among any other class of the population, the average being one and a half children to the family. While the budget for the civil service has greatly increased in recent years (it now amounts to about $200,000,000 per year, or substantially one-fifth of the total budget of the State) there has been little or no increase of official salaries. This is explained by the enormous increase of the number of public employees which has entailed so heavy a burden upon the State that no government has felt able to raise their pay although there has been a general desire to do so. Everybody in France admits that the number of employees is excessive and that the remedy is to reduce the number and increase the salaries of those who are left, but this sensible solution has not been adopted. Balzac in his day complained that the number of state employees had attained the figure of 40,000; today the number is in the neighborhood of 1,000,000 or an average of one functionary for every forty persons in the republic. Under an over liberal pension system which permits employees of the State to retire after twenty-five years of service, the number of civil *pensionnaires* has reached 315,000 and the pension budget has risen to $20,000,000 a year. The remedy, as M. Lefas justly observes, is to reduce these burdens by abolishing a large number of useless offices. This can be done by reforming the whole administrative system and especially by decentralizing the administration and by abandoning the system of administrative *paperasserie* which requires the services of thousands of employees who are occupied in the preparation and copying of useless papers. This done, the State will be in a position to respond to the just demands of the functionaries for more adequate compensation for their services.

Favoritism and arbitrariness in respect to appointments and promotions, says M. Lefas (p. 67), is the *bête noir* of the functionaries. In too many cases young attachés in the ministerial ante chambers are preferred to older and more experienced candidates who have served their time in the departments or who have passed the examinations with credit. In France there is as yet no civil service law such as one finds in England, the United States, Germany, and other countries, which regulates the conditions of appointment and promotion, which classifies the employees and determines their salaries on the basis of such classification and which protects appointees from political influence, favoritism and arbitrariness on the part of the government. All these matters in

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France are regulated, so far as they are regulated at all, by ministerial decrees and orders, each minister being free to prescribe such regulations for his own ministry as he pleases. It is true that whenever a decree of this kind has been issued the council of state will compel its observance by annuling all appointments and promotions made in violation thereof, but what one minister can do his successsor can undo. It results therefore that each incoming minister issues a new decree embodying his own ideas on the subject, and there have been cases where a new minister suspended the existing decree in order to find places for his own favorites, after which the old decree was reissued. Under such a system there is no uniformity of policy; the functionaries in one department have a status entirely different from those of another department and of course there is no security of tenure. The functionaries as I have said, demand the enactment by Parliament of a law which will protect them against the abuses mentioned and their cry has made itself heard in the country at large. The question of ameliorating their sorry condition was one of the principal issues in the election campaign of 1910 and a majority of the deputies elected had in their *professions de foi* expressed themselves in favor of granting some or all of the demands of the functionaries. Several governments, notably those of Clemenceau in 1906 and Briand in 1910 promised the functionaries such a law but like so many French cabinets they went out of power with their promises unfulfilled.

The whole history of the question: the grievances of the functionaries, their demands, the civil service legislation of other countries, the various *projéts* that have been introduced by different cabinets and the reports that have been made thereon by parliamentary commissions, is reviewed in detail in M. Lefas's book. Altogether it is a substantial study of a live and important question of French politics.

JAMES W. GARNER.

The American Doctrine of Judicial Supremacy. By CHARLES GROVE HAINES. (New York: The Macmillan Company, 1914. Pp. xvii, 365.)

Prof. Haines sets out "to present in brief compass the history, scope and results of judicial control over legislation in the United States." His book does not pretend to be based on original investigation, although the author has in some cases contributed new materials, and has in others viewed his problem in a new way.

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The avowed purpose of presenting "the history, scope and results of judicial control" has not been fully met. To judicial control before 1830 the author devotes about two-thirds of his book. Upon developments between 1830 and the present time there are three scant chapters. To recent criticisms a chapter is given, and there is a very brief discussion of the rules under which courts act in exercising a power to declare laws unconstitutional. This apportionment of space is clearly not adjusted to the relative importance of the several topics, and the several parts of the book must almost necessarily be judged by different standards.

The larger part of the book—that devoted to judicial power before 1830—is well done, and is a valuable addition to the literature of the subject. The author is familiar with all of the more essential discussions, and has handled his subject with judgment. This part of the volume is not without error, but the general result is satisfactory. For this earlier period attention should be called to the fact that the list of state cases before 1820 (pp. 73–77), while not claiming completeness, is less complete than it should be. The statement (p. 82) that courts had gone a long way toward the establishment of judicial supremacy before Holmes vs. Walton is open to question. The courts of New York did discuss and approve the principle of judicial control before 1819 (p. 119). Legislative protest against a Georgia decision of 1815 should have been mentioned in the discussion of opposition to the practice of judicial control. These, however, are but minor defects in an otherwise satisfactory discussion.

But the historical treatment of the period from 1830 to the present time is fragmentary and unsatisfactory. In the first place the author devotes his attention almost exclusively to the supreme court of the United States for the period between 1830 and 1870. The judicial function of the federal courts was relatively less important during this period because (1) the court under Marshall had already done the important work and had in some respects gone too far in its limitation of state power and (2) the federal courts fell into the background on account of political conditions and the war. But the essential developments of judicial power were in the state courts and are almost entirely ignored; what the author has upon these developments is not accurate. The reiterated statement that the democratic movement caused a material reduction of judicial control in the States between 1830 and 1860 is not in agreement with the facts; and it can hardly be admitted that judicial power over legislation during this period was confined mainly

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to North Carolina, Massachusetts, New York and New Hampshire (p. 262).

The period from 1870 to the present time is not covered in such a manner as to give a satisfactory knowledge of real developments. This is due in large part to the brevity of the treatment, but also to statements which appear to be hardly accurate. For example the extension of judicial power during this period is due not so much to the development of extra-constitutional limitations as to the reading of natural right theories into constitutional limitations which are themselves indefinite (p. 289 *et seq.*).

In the final chapter, dealing with recent criticisms of judicial power, the part devoted to criticisms by the courts themselves (pp. 313–328) is very well done, but the chapter as a whole is inadequate. The weakening of judicial power came not as a result of dissenting opinions but as a result of the judicial action which occasioned the dissent (p. 315). The Illinois case of 1895 upon hours of labor of women was not reversed (p. 329), however much the view of the later case may differ from that of the earlier. There is no adequate analysis of the movements for the recall of judges and of judicial decisions. The author does not indicate sufficiently that a movement is already well under way among the courts themselves to apply more liberal tests in passing upon the validity of social and industrial legislation (pp. 334, 352).

But a part of one brief chapter is devoted to the rules under which courts act in passing upon the constitutionality of statutes (pp. 173–199); the traditional statements, which to a very large extent do not agree with the facts, are here repeated. Upon judicial control in other countries there is merely an incidental discussion, and no complete or accurate statement of the situation in other countries is given (pp. 2–10, 197).

Upon the whole, it should again be said that the greater part of the book (that dealing with the period before 1830) is of distinct value, while the remainder is of much less importance. The volume does, however, present the best connected account of the origin and development of judicial power in the United States.

W. F. Dodd.

Law, Legislative and Municipal Reference Libraries. By John B. Kaiser. (Boston: Boston Book Company, 1914. Pp. 467.)

In a volume entitled "Law, Legislative and Municipal Reference Libraries," Mr. John B. Kaiser, librarian of the Tacoma public library,

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formerly legislative reference librarian of Texas and sociology librarian of the University of Illinois, has brought together a wonderful array of material and has presented it in such a thorough and painstaking manner as to have completely preëmpted the field connected with the subject. The book is complete in scope and accurate in detail and it is right down to the minute of its publication in May, 1914.

A comprehensive book was needed on the subject. Heretofore, library workers in this special field began blindly or upon blind experience. Particularly was this true of law libraries—perhaps the most backward and inefficient in all the range of library activity. Little has been written about the law library and few aids have been provided for law librarians or for law students. Only the most superficial knowledge of the use of the law library has been given in law schools. It is to be hoped that this book in the hands of law librarians and professors of law will bring about a new attitude among law students toward the sources of legal information.

The treatment is concerned with needs and types of law libraries; the kinds of material; and the handling of material, including methods of cataloging and shelving. Court reports, state and federal, and digests, text-books, law periodicals, public documents, statutes, and legal bibliography are explained.

To all law libraries, whether large or small, the book is of great value, while to the students of law and of library methods it is indispensable. It should have the most wholesome effect upon public libraries in lifting them out of their fear that legal works will contaminate their shelves. The book should have contained a plea to public librarians to get acquainted with legal bibliography and to treat law books as a possible part of their reference departments.

The chapters on legislative and municipal reference libraries set forth the large place which these institutions have come to fill and furnishes a guide for the hundreds of new institutions of this sort which are springing up every day in connection with state and city libraries, chambers of commerce, welfare departments, and social and civic clubs.

Again it must be said that the field has been preëmpted. Little can be added either in general discussion or specific aids. The librarian will find everything needed from the discussion of the need of such libraries to the selection of pamphlet holders.

The history of the idea of legislative and municipal reference is given in its application to intelligent legislation; the materials are criticized and bibliographic helps added; the methods of collecting and preserving

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material are described in detail and the agencies which help the work receive generous approval; and the actual process of preparing for a legislative session, the drafting of bills, and condensing of information for legislators is outlined. Discussions of the qualifications of librarians, the success and profits of the work, and the methods of coöperative effort are given considerable space.

Valuable appendices are added giving compilations of laws relating to legislative and municipal reference work and bill drafting, lists of legislative reference publications, bibliographies of legislative and municipal reference, and bill drafting besides suggested problems for use in class work in library schools.

If the book has faults we must pass them over in admiration for the completed work. To bring all that the author has brought together within the covers of a single book of 467 pages, is a feat which challenges any adverse criticism. It has blazed a trail and in its description of the purposes, methods and results of these types of special libraries it has greatly facilitated the work of hundreds of other special libraries in business, finance, manufacturing and public affairs. The underlying purpose of all special libraries is to focus knowledge on a given problem. By showing how law, legislative and municipal reference librarians and bureaus may do this all other libraries seeking the same purpose in other fields profit by comparison.

JOHN A. LAPP

The Neutrality Laws of the United States. By CHARLES G. FENWICK. (Washington: Carnegie Endowment for International Peace, 1913. Pp. 201.)

The trustees of the Carnegie Endowment for International Peace in 1911 directed the division of international law to examine the neutrality laws of the United States, and to suggest improvements tending to make them more efficient. The result is this book, in which Dr. Fenwick has ably fulfilled the task assigned him. The book must meet to the full the expectations of the trustees, as it does the anticipations of those who look to the endowment to produce work of the highest merit.

The character and scope of neutrality laws is explained, and these are distinguished from the international obligation of neutrality which they are designed to meet. The neutrality laws of a state may or may not conform to the international standard of neutrality. If they exceed that

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standard, they entail no additional obligation to other nations except that of impartial application. If, on the other hand, they fall short of that standard, the international obligation continues unchanged, and the neutral is in the unfortunate position of being responsible to other nations for situations which, under its municipal laws, it cannot prevent.

The history of the development of the neutrality laws of the United States is recounted, and is followed by a consideration of their judicial interpretation, for the purpose of showing the exact restrictions imposed on citizens and aliens. American and British documents are appended.

From this examination, it is concluded that there are a number of acts which a neutral state is bound by international law to forbid, which are not covered by the present neutrality laws of the United States. These deficiencies are due partly to the formulation of stricter international principles of neutral duties and partly to changes in the methods and instruments of war.

Among the acts which involve a hostile use of neutral territory, but which are not now indictable under the laws of the United States, may be mentioned the exercise of a commission obtained abroad, solicitation or inducement to accept a commission or to enlist in belligerent service, the building of vessels for hostile use (without fitting them out), and the furnishing to belligerent vessels of large quantities of provisions, coal, and other non-military supplies not included in the existing prohibition of "equipment solely applicable to war." These and other suggestions are embodied in the concrete form of a draft of an amended neutrality code for the United States, following as nearly as possible the language of the act now in force.

If there is any question as to the timeliness of this publication in view of the present European conflict and of the difficult duty of neutrality incumbent upon the United States, it can be only as to the scope of the work undertaken. Specific neutral duties, arising from the recent use of the air in great part, have come into being since our laws were written. The use of wireless telegraphy is a case in point. The international rule as to naval craft is fairly established; but no specific rule is applied to aerial craft. If it is allowable to prepare an aeroplane for the military use of a belligerent, is it permissible to build and equip for war a Zeppelin? The latter is probably a more formidable war machine than a torpedo-boat destroyer. Although the duties of neutrals in such matters may not as yet have been defined by international law, they nevertheless exist under that law, and the United States is

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as responsible for the enforcement of a correct decision as though the international principle were already more clearly formulated. Our country should decide what its duties are and enact the necessary legislation to fulfill its conception of them. The scope of the present work has been limited to the remedy of defects discovered through past experience, and does not propose legislation to meet the obvious difficulties of the future, some of which have materialized since the appearance of this book.

It would be ungrateful in the extreme, however, to insist upon the possibility of broadening the scope of a work which has been so excellently done within the limits proposed. Dr. Fenwick is certainly to be congratulated.

ROBERT T. CRANE.

An Economic History of Russia. By JAMES MAVOR. (New York: J. M. Dent and Sons, 1914. Vol. I, pp. 614; vol. II, pp. 630.)

Mr. Mavor's work has been out for several months, and has received very favorable comment from many quarters. It helps to fill a large gap; we have few solid studies of Russian economic and political conditions that are accessible to the student who can not go to the Russian sources. This very fact was probably responsible for the kind of book the writer felt called upon to give us. Perhaps his treatment by topics was the most satisfactory method for handling the problem that confronted him. It then became a question of arranging the material within each chapter, paying less attention to the sequence of the chapters.

The sources used by the author are most varied in character. In the first place Mr. Mavor has spent considerable time in Russia, and has observed for himself. Here he has shown keen judgment and careful discrimination. Then he has used very freely the best general history of Russia, that of Kluchevsky. This entire work, perhaps the best that recent Russian scholarship has produced, has been translated into English, the fourth and last volume being in the last stages of preparation. Mr. Mavor had begun his work before this translation was undertaken. For the earlier periods the writer uses similar, acknowledged Russian authorities on more special subjects, as for instance the works of Semevsky, on the peasant question. This is one of the most valuable sides of the work before us; it familiarizes English readers with the writings of Russia's best scholars.

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There are certain books which every student of Russian history must use. The best account of the history of the social Democratic party in Russia is that of Lyadov. To understand the interesting movement of the seventies of the last century, the so-called "movement to the people," the reminiscences of Debogory-Mokreyevich are invaluable. Mokreyevich took a prominent part in this movement, but he describes it with remarkable clearness and impartiality. Other similar books could be enumerated. Here again Mr. Mavor has done a great service by giving full excerpts and citations from these books. He ha shown excellent judgment in the selection of his materials.

The writer does not confine himself to purely economic questions. He gives a chapter on the political police system that produced a man like Azev, who was at the same time in the terrorist organization, and in the employ of the government. He analyses the "rationale" of this system very clearly: "An autocratic government is obliged to make itself aware of oppositional movements in time to counteract them, whether these movements are intended to have a violent issue or not. The police system, with its espionage, is thus an incident inseparable from autocracy. . . . The transition from espionage to 'provocation' is inevitable; for the spy who has gained admission to the center of a revolutionary organization, must act as a revolutionist, or he would be immediately suspected. The 'perfect spy' must not betray continuously, therefore, but only occasionally, in order to prepare a magnificent *coup* in which the revolutionary movement should be altogether crushed." In a note Mr. Mavor suggests the argument that "the system of espionage is inseparable from government per se, the chronic condition of crisis through which the Russian government has been passing for upwards of a century merely accounting for its special manifestations in Russia."

A chapter on "Police Socialism" gives an interesting picture of another somewhat similar method of procedure practiced by the Russian police authorities. It describes the ideas and activities of a certain Mr. Zubatov, who has given his name to all methods of this type in Russia. The police organized the workmen into unions, and ordered the factory owners to employ only union men. The police dictated the conditions of employment, and also fixed the wages. But the "policy of controlling the labor movement, and of separating it from the revolutionary movement—that was the idea of Zubatov's manoeuvres—with the design of turning it to the account of autocracy, came to a disastrous end."

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The chapters on various aspects of peasant conditions are some of the best in the book. The writer states the general character of the important agrarian reforms now in progress in Russia.

There is one question that one would expect to find treated in an economic history; it is the question of commercial treaties, and of tariff and protectionist policies. This point has been of particular interest these last years, and the negotiations preliminary to the renewal of a commercial treaty between Russia and Germany were a considerable factor in creating the state of mind which accounted for the attitude taken by the Russian public in the present crisis. The policy of Berlin to keep Russia in a kind of economic dependence on Germany, had created much feeling in Russia. Again we find no mention of the recent legislation with regard to workmen insurance. This law, it is true, was passed only recently, and is still in the first stages of application. But it shows what Russia is doing in this line, and some of the provisions in the Russian law are novel and interesting.

On a few minor points the reviewer feels that a word of criticism is necessary. There are several bad mistakes. The Franco-Russian Alliance is spoken of as an Entente. The great reactionary adviser of three emperors, Pobedonotsev, is indicated as still alive. Again in the matter of transliteration of Russian terms and words, there is lack of system or uniformity, all of which points to inadequate revision, which is particularly unfortunate in a work of this character. The abbreviation of Russian terms, such as "gub," is annoying. We are now having more serious studies of Russia; it is therefore time that English writers adopt the system of their German and French colleagues, and *transliterate* the titles of the Russian books cited. It is very difficult to reestablish the exact title from a translation, and only those who know Russian can use the references. A translation of the title might be added, to show the general character of the book cited, for the reader who does not know Russian.

This important contribution to the meagre literature on Russia accessible to the general student, is most welcome. It is easy to pick out important oversights in a book covering so long a period and so many aspects of the life of a country. But such books are necessary at the beginning, and we are at last at the beginning of an effort to develop the serious study of things Russsian, both in England and in America.

SAMUEL N. HARPER.

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Outlines of International Law. By CHARLES H. STOCKTON, Rear-Admiral U. S. N., Retired. (New York: Charles Scribner's Sons, 1914. Pp. xvii, 616.)

To those who are familiar with the activity of Admiral Stockton in the field of international law for many years past it will be a matter of sincere gratification to find that he has at length found it possible to supplant his earlier brief "Manual of International Law" by a thorough and comprehensive treatise upon the subject. As delegate to the London Naval Conference and as lecturer during many years at the George Washington University, the author has had experience in constructive as well as in didactic work upon the problems of international law. He has not, however, sought to give us a treatise based upon individual research work in all of the many branches of a greatly ramified subject, but has rather chosen to collate from existing works, to rearrange, to present obscure questions in clearer form, to criticize and to comment. International law is not a fixed code—it is a law which is being made and developed as each year goes by. Even if it were proper to look upon the Hague conventions as equivalent to statutory law (and the lack of general ratification forbids our doing so) the terms of many of these conventions are too general and indefinite, too much in need of an interpretation to govern their application to actual conditions, to make it possible to pronounce finally upon their meaning. Hence while the individual sections of the field of international law need to be made the subject of detailed treatment in monographic form, the field as a whole offers opportunity for a general study in which the underlying principles and larger tendencies shall have due prominence in the midst of the variations of usage and practice. It is in this latter respect that Admiral Stockton's work will be of special value at the present time.

In discussing the laws of war on land the author is careful to remind the reader that while the Hague convention upon that subject has been ratified by "practically all of the civilized states of the world" (Italy, Servia and Turkey are notable exceptions), the regulations are only binding between the contracting parties. It cannot be too often repeated that the Hague code must not be looked upon as a final statement of positive law, but must be read in connection with the customs and usages preceding the year 1899. It is interesting to note that the author frankly recognizes that certain articles (Art. 18 and the last clause of Art. 60) of Lieber's code have become obsolete. The same

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remark might have been made with regard to Article 26 of the code (quoted on p. 301) and with regard to Article 36 of the code, if the Hague convention (Arts. 45 and 56) is to be taken as the standard. The reality underneath some of the rules of the Hague code appears when the author points out (p. 314) that in view of the many ways in which the property of individual citizens may be taken over by a hostile military occupant the so-called exemption of private property from capture "may be called almost nominal." In discussing some of the unsettled questions of international law the author points out that privateering is a thing of the past and that it is high time for the United States to give its formal adhesion to the Declaration of Paris. He justifies the action of the United States in not signing Convention VI relative to the status of enemy merchantships at the outbreak of hostilities, pointing out that the new rule is not as liberal as the old one. As between the advocates and opponents of the right to convert merchantships into warships on the high seas, he favors the Italian compromise that such conversion should be limited to ships which left their last port of departure before the commencement of hostilities.

If in the occasional loose construction of its sentences and in its superfluity of quotations (the author's own works, previously published, being often quoted where they might have been paraphrased), the work bears traces of a hurried revision, the general public will readily overlook such minor defects in consideration of the service which has been rendered it in placing at its disposal during these critical times a treatise which is at once readable in form and authoritative in content.

C. G. FENWICK.

Die Judikature des Ständigen Schiedshofs von 1899–1913. Dritter Teil. (München und Leipzig: Duncker und Humblot. 1914. Pp. 368).

This volume belongs to the series bearing the general title "*Das Werk vom Haag,*" edited by Professor Schücking of the University of Marburg, of which two volumes, *Der Staatenverband der Haager Konferenzen,* by the general editor, and *Das Problem eines internationalen Staatengerichtshofes,* by Hans Wehberg, have already appeared. It forms the third part of a volume which deals with the decisions of the Hague Permanent Court of Arbitration during the period 1899–1913 and which is itself the first of a series which is to embrace the judicial decisions of The Hague as a whole. It includes the Orinoco case by Otfried Nip-

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pold, the Savarkar case by Josef Kohler, the Canevaro case by Ernst Zitelmann, the Russo-Turkish case by Christian Meurer, and the Carthage-Manouba case by Theodor Niemeyer. Each case is preceded by a bibliography of works relating to it. In all but the Canevaro case the order of treatment consists in a statement of the facts of the dispute, the procedure adopted for the settlement of the dispute, followed by the award of the judges and a criticism or estimate of it. In the Canevaro case Professor Zitelmann first summarizes the facts and presents the award and then proceeds to discuss in detail the questions of international law, both public and private, which are raised by the case.

There can be no question but that the present volume together with the two which are to accompany it will be of great service not only as contributing to the further development of international law by offering precedents which may serve as rules of conduct, but principally in manifesting the feasibility of international arbitration as a means for the prompt and just settlement of international disputes upon a judicial basis. In answer to those who assert that international procedure is too slow ever to become a satisfactory method of adjusting disputes between nations, it may be observed that in the Savarkar case the period between the conclusion of the compromise and the rendering of the award was but four months, in the Carthage-Manouba case one year and three months and in the Orinoco case one year and eight months. Adjudicated cases have, it is true, no power of themselves to create a standard of international practice, but if the awards they embody are intrinsically reasonable they cannot but commend themselves to the legal and moral sense of the nations and thus lay the basis whether for international custom or for codification into formal statute law.

C. G. Fenwick.

Municipal Life and Government in Germany. By William Harbutt Dawson. (London: Longmans, Green and Company, 1914. Pp. 507).

One naturally turns with eager interest to a work on Germany at a time when we are told on every hand of the despotism of her political institutions, when, in a word, we are led to wonder whether anything we ever learned that is creditable to Germany, is really true; and our interest is heightened in this case by the fact that the author is an Englishman whose work has occupied his attention, so he tells us, at intervals

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during a period of twenty-five years and was brought to a conclusion at the outbreak of the great war. The book, however, bears no trace of hostility, for the author is in sympathy with his subject and frankly admits his admiration for German municipal institutions—especially on their administrative side. "Impressed by the larger autonomy of German towns," he asks "whether in this country (England)—the proverbial home of free institutions—we yet really understand what true self-government means?" Nor is the favorable impression due merely to the results achieved by the German municipalities, which, we are often told, are not due so much to a spirit of local initiative and independence as to a bureaucratic system which carries with it the defects of its good qualities, among them, a loss of vital contact between the government and the people. But the fact is that in no other country does the central authority so completely throw the responsibility of government upon the local community, and nowhere is this responsibility so wisely and efficiently met. This, in a word, is the cardinal conclusion to which a careful reading of the work leads us. Another striking fact, shown throughout the work, bears testimony to the wisdom of Stein in framing a municipal code when the population of Prussia was largely rural (1808), so elastic and adaptable that with no fundamental changes since then, it has met the conditions of the urban population of the present time. While claiming no superiority for the German electoral basis of local goverment over that of England, the author believes that "the institutions of the professional and salaried mayor and aldermen (magistrat) represent the highest and most efficient development of municipal organization reached in any country."

The first four chapters deal with the history, the organization and machinery of municipal government and the distribution of administrative powers; land and housing policies, town-planning, public health, trading enterprises, poor relief, social welfare, and intellectual life, are chapter-headings of another phase of the work; five chapters are devoted to the subject of finance and taxation, while a final chapter brings together some conclusions and comparisons with English conditions. The last forty-six pages are devoted to appendices illustrating typical legislation, regulations, by-laws, programs and an index. While German literature of every description has been freely used, the work bears much evidence of first-hand observation from life and actual practice, and, in the opinion of the reviewer, it is the most informing work upon German municipal government that has appeared in English.

KARL F. GEISER.

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America and the Philippines. By CARL CROW. (New York: Doubleday, Page and Company, 1914. Pp. xi, 287.)

This is the latest addition to a class of books that is becoming rather numerous. It is profusely illustrated, is written in a clear, animated style and on the whole accomplishes its purpose of giving a fair account of what Americans are doing in the Philippines. Mr. Crow admits that despite the material benefits conferred by American rule, the Filipino people hate us and he goes farther than most writers on the Philippines in telling why. Here is an instructive passage:

"My pride in American administration was rudely shattered by a visit to a Manila police court. The magistrate, an American, presided in his shirt sleeves. He had evidently not been shaved for twenty-four hours, and he rolled and smoked cigarettes while hearing evidence. Of course his coatless, unshaven condition and his cigarettes probably did not interfere with the precise operations of his legal mind, but it added nothing to one's conception to the dignity of the law. The sight of this disordered courtroom came as a decided shock after several years of observation of the dignified British courts of the China coast. The comparison was equally striking when, on the following day, I visited a justice court, presided over by a Filipino. He was freshly shaven, his collar was clean, he ate no toothpicks and smoked no cigarettes while on the bench, where he presided with dignity, and, I presume, with justice."

But all the same the color line is drawn against the Filipinos with the utmost strictness and as nothing of the kind was experienced under Spanish rule the Filipino gentry are naturally affronted. Human nature is so constituted that insults are resented more than injuries. Although American rule in the Philippines has aimed at introducing American speech and political methods, it remains a system of alien control maintained by force over a people who cordially detest it.

HENRY JONES FORD.

The Canadian Annual Review of Public Affairs. By J. CASTELL HOPKINS, F.S.S., F.R.G.S. Thirteenth Year of Issue. (Toronto: The Annual Review Publishing Company. Pp. 766. Supplement, pp. 70.)

If evidence were needed of the new place among English-speaking countries that the Dominion of Canada has attained in the last twenty-five years, it can be had by comparing the *Canadian Annual Review* of

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1913, edited by Mr. J. Castell Hopkins, with the *Dominion Annual Registers* compiled by the late Henry Morgan from 1879 to 1890. These were serviceable publications of their class and period; and they were compiled with much care and intelligence. But the years covered by Mr. Morgan's work were the days of provinciality and small things in Canada; and not one of the issues for which Mr. Morgan was responsible as editor much exceeded five hundred comparatively small pages. The last issue of the *Canadian Annual Review*—that for 1913—runs to 766 quite large pages; and it would be difficult to name any aspect of the political and economic history of Canada that is not adequately treated in one or other of the twelve sections into which the *Review* is divided. Nine of these sections are concerned with Dominion politics, with politics at the provincial capitals, with developments in the transportation world, and with journalism and literature in Canada during the year. These nine sections constitute by far the larger part of the *Annual*. They are sections that have been of it since the first year of publication, and the disappearance of any one of them would be a distinct loss to students of Canadian politics and economics in this country who have come to depend in large measure on the *Annual Review*.

In addition to these permanent sections there are each year other sections dealing with developments that cannot with adequacy of treatment be brought within the scope of any of these sections. The subjects so treated—and treated at much length in the issue of 1913—are (1) the depression in industry and commerce that marked the year—the depression due to the financial stringency that began in the winter 1912–13, and continued all through 1913; (2) the working of the new banking law that was enacted at Ottawa in the session of 1912; and (3) the controversy at Ottawa and in the constituencies that preceded the rejection by the Senate of the bill of the Borden government for varying quite considerably the naval policy that was adopted by the Laurier government in 1910.

Large and comprehensive as the *Annual Review* now is it needs much care and discretion to record all the developments in a country that was progressing as was Canada until the depression of 1913 to some extent brought things to a halt. Mr. Castell Hopkins can be congratulated on the success attained by the exercise of this care and discretion, and on the equally notable success that he achieves in marshalling the enormous mass of material that goes to the make-up of the *Review*.

EDWARD PORRITT.

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Municipal Charters—A Discussion of the Essentials of a City Charter with Models for Adoption. By NATHAN MATTHEWS. (Cambridge: Harvard University Press, 1914. Pp. 210.)

The field of city charter making has been the most neglected in the whole range of municipal science and yet it is and will be increasingly one of the most important of those fields. Any book, therefore, which takes up this important and complex problem is to be welcomed, particularly when written by a man who has had the close connection and extended experience in practical municipal affairs that Mr. Matthews can show. The book consists of two parts, a theoretical presentation of ninety pages and practical charter drafts occupying about a hundred pages. There is very much that is of interest in each of these two parts and particularly the last portion which gives complete charter drafts both for the mayor and council form and for the commission form of city government. Every student of municipal affairs as well as those engaged in a practical way in determining the fundamental laws for cities should have an acquaintance with this book.

To the man, however, who looks for what are generally regarded as advanced ideas in American municipal government, the book will prove a disappointment. Mr. Matthews' views with regard to municipal organization are virtually those set forth in the National Municipal League program of 1899. It is interesting to note, however, that the National Municipal League has deemed it necessary to revise its program in view of newer developments and that the tentative program submitted at the last meeting of the National Municipal League in November, 1914, by the new committee on municipal program, presented very fundamental departures from the recommendations contained in the municipal program fifteen years ago. Mr. Matthews' book, on the other hand, does not admit the desirability of adopting the changes which have come in since commission government began its career in this country fifteen years ago. This fact can perhaps best be illustrated by pointing out that the city manager plan which is now occupying the center of the stage in discussions of municipal affairs and to which the committee of the National Municipal League is committed is not discussed in Mr. Matthews' book at all and is barely mentioned in a footnote of a few lines.

Now it is true that Mr. Matthews in his introduction and throughout his book minimizes the importance of what he calls the political provisions of the city charter as compared with the administrative provi-

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sions. But all intelligent discussions of the city manager plan have centered about the proposition that the chief advantage of the city manager plan is in its administrative possibilities. In other words, the city manager plan is considered valuable chiefly in that it does carry out marked improvements in the machinery of administration, and it would seem therefore to merit at least a discussion in a book which attempts to emphasize the importance of the administrative side. However, many of the suggestions which Mr. Matthews makes in his book with regard to the problems of administration can very well be applied to the city manager plan to make it more effective and it is therefore fair to say that the best features of Mr. Matthews' book are entirely applicable as well to the city manager plan which he ignores, as to the ordinary commission form of government of which he does not approve.

H. G. J.

Documents Illustrative of International Law. By T. J. LAWRENCE. (New York: Heath and Company, 1914. Pp. vi, 351.)

This is not a case book, not yet a source book. It makes no pretense of giving a very large number of the important documents in international law. Indeed, as the title indicates, the primary object of this collection is not to exhaust but to illustrate the field. In the selection of specimens of all classes of writings and written instruments affecting the development of international law, the author is singularly happy. There are included extracts from the writings of the founders of the science, treaties, judgments of prize-courts, arbitral awards, state papers of all kinds, and accepted opinions of modern publicists and private associations.

Although the express purpose of the book is to illustrate, it does far more. It is valuable as a reference book, and will be found particularly useful by everyone who takes an interest in the international questions involved in the present European war. Here, more easily than elsewhere, will be found in their exact wording the Hague conventions, the Declaration of London, and other rules of which exaggerations and misstatements appear almost daily.

In view of its utility for reference, the book might be criticised for omissions, as for example of all documents relating to nationality, or to extraterritoriality, or of the rules of the Treaty of Washington (quoted however in the author's text-book). It might be criticized again for

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giving to the arbitral award in the North Atlantic Fisheries dispute a space nearly equal to that devoted to all documents touching neutrality; or for the inclusion of the recent treaty between the United States and Columbia, which in all likelihood will never be ratified. But to criticize thus would be to measure the work against a task which the author never undertook, rather than to give him the credit due for accomplishing his task of illustration so excellently as to achieve at the same time a work of unique value for reference.

ROBERT T. CRANE.

The Great Society. By GRAHAM WALLAS. (New York: The Macmillan Company, 1914. Pp. xii, 383.)

Mr. Wallas' latest book is an essay in social psychology. He makes an analysis of the general social organization of a large modern state, pointing out inadequacies and considering possibilities of improvement. He manifests an extent of vision and an amount of knowledge that make his observations inspiring and suggestive, but the work does not escape from the vagueness and subjectivity that are the ordinary characteristics of works upon social psychology. Mr. Wallas discusses such topics as fear, pleasure, pain, happiness, the psychology of the crowd, the organization of thought, the organization of will in a way that affords intellectual enjoyment, but one does not seem to arrive anywhere. As to this, it should be said, however, that the book does not aim to do more than to state problems that must be solved in organizing the great society, with suggestions as to solutions. Mr. Wallas' views are always worth considering, but at times it must occur to one whether he is not really engaged with English particulars when he purports to be dealing with universals. The political color of the chapter on the "Organization of Thought" is distinctly English and in general the work seems to be a consideration of the situation and prospects of a particular great society—that which has been produced in the course of English history.

HENRY JONES FORD.

Essai sur la legitimité des gouvernements dans ses rapports avec les gouvernements de fait. By RAYMOND GAUDU. (Paris: Librairie Felix Alcan. Pp. xviii, 821.)

The question of determining the legitimacy of de facto governments which come into power in ways not provided for by the constitution of

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state is a problem which has come home to us with peculiar force by reason of recent events in a neighboring country. To examine upon what theoretical principles the authority of de facto governments has been justified in the past is to go down to the very basis of political theory, to challenge the nature of the state itself. For state and government while separable in concept are inseparable in fact.

After an introductory chapter in which the abstract elements of his subject are set forth the author enters upon a detailed historical presentation of the theories that have been held concerning the legitimacy of de facto governments. This is doubtless the more valuable portion of the work to the political scientist. Beginning with the theories of Thomas of Acquin we are led step by step from one school to another down to the latest theories advanced in France and Germany. One cannot but be struck with the persistent recurrence of old doctrines under new forms and with the varying fortunes of abstract principles when applied to the concrete conditions of different centuries. The principle that the legitimacy of governments is based upon the necessity of the social order, i.e., that the existence of a government finds its justification in the fact that it accomplishes the purpose for which governments are consciously or unconsciously established, namely, the welfare of the social body, was very differently conceived in the minds of St. Thomas and of von Jhering. Both arrive at conclusions which when abstractly stated seem not unlike, but the grounds upon which they base their deductions are as far apart as theology and positive law.

As an alternative to this subjective test there is the theory held by Pufendorf, Locke, Vattel, Rousseau and others that the legitimacy of a de facto government is based upon the sovereignty of the people, whether as inherent in the ultimate decision of popular approval or disapproval or as expressed in written constitutions. But public opinion is not readily ascertainable at times when de facto governments come into power; indeed, except in cases of vacancy, the very circumstances which make it possible for de facto governments to be set up make it impracticable to ascertain the popular will. Lastly, there is the theory which attempts to combine the necessity of the social order with the rights of individual liberty and of popular sovereignty. This harmonizing of two divergent theories seems to the author to be the true solution, at least to the extent of reconciling the principle of the necessity of authority with the practical consequences of the sovereignty of the people.

The second part of the treatise is devoted to a study of the various

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de facto governments which have been set up in France since 1789. With admirable skill the author develops from the history of the times and from the motives of the persons forming such provisional governments the theoretical principles upon which their conduct was based or pretended to be based. In conclusion M. Gaudu gathers up the threads of the two preceding parts and passes a general criticism upon the theories in their abstract form and as illustrated in history. The whole study is an excellent example of the scientific work in theoretical and practical politics with which recent French writers have enriched the field of political science.

CHARLES G. FENWICK.

Foreigners in Turkey. By PHILIP MARSHALL BROWN. (Princeton University Press, 1914. Pp. iv, 118.)

Of the many favorable impressions created by this book, perhaps two most deserve recording. One is the value of its contribution to our knowledge, and the other is the exceptionally scholarly manner of its presentation.

Use has been made chiefly of Italian and French studies and of the Ottoman collection at Harvard University to supplement an investigation undertaken while the author was in the American diplomatic service at Constantinople. So little of that material is generally accessible to American students that the book fills a hitherto almost unoccupied field.

The book offers something more than an historical account of the capitulations and an analysis of existing extraterritorial rights in Turkey. It presents a thesis as to the proper basis for the solution of the abnormal situation of Turkey in international law. It shows that although the immunities of foreigners are sustained by duress, yet in their origin they arose from a free and spontaneous grant by the conquering Moslems at the very moment of their supreme triumph. The author therefore maintains that these privileges of foreigners should be regarded, not as exceptions to international law, but "as evidence of a more enlightened and a more liberal interpretation of the law of nations than has yet been granted in Europe." While urging the justice to Turkey of modifying the capitulations the author argues a tendancy in international law to acceptance of the principles of a limited immunity of aliens from the jurisdiction of the territorial sovereign.

ROBERT T. CRANE.

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RECENT GOVERNMENT PUBLICATIONS OF POLITICAL INTEREST

BY JOHN A. DORNEY

Library of Congress

UNITED STATES

Appropriations, New Offices, Etc. 63d Cong., 1st and 2d sess., by Jas. C. Courts, clerk to the committee on appropriations, House of Rep., and Kennedy F. Rea, clerk to the committee on appropriations U. S. Senate. 1914. 779 p. 4°. Sen. doc. 621. *U. S. Senate. Committee on Appropriations.*

Contains statements showing: 1. Appropriations made during the 1st and 2d sess. of the 63d Cong. 2. new offices created and the salaries thereof; 3. offices the salaries of which have been omitted, with the amount of reduction; 4. offices the salaries of which have been increased, with the amount of such increase; 5. offices the salaries of which have been reduced, with the amount of such reduction; 6. amount of contracts authorized by appropriations acts in addition to appropriations made therein; 7. references to indefinite appropriations; 8. chronological history of the regular appropriations bills.

Argentine Constitutional Ideas. Address delivered before the American Bar Association at the annual meeting held in Washington, D. C., on Oct. 22, 1914, by Hon. Rómulo S. Naón, Ambassador from Argentina to the U. S. 1914. 19 p. 8°. Senate doc. 618. *U. S. Senate.*

Coal Lands in Alaska, Leasing of. Conference Report (to accompany H. R. 14233). 1914. 16 p. 8°. (H. of R. Report no. 1178.) *Committee of Conference.*

Coal Lands in Alaska, Leasing of. Report. Senate Committee on Public Lands (to accompany H. R. 14233). 1914. 3 p. 8°. (Senate Report no. 790.) *Committee on Public Lands.*

Commercial Law. Report of the Committee on Commercial Law to the American Bar Association at their meeting at Washington, D. C., Oct. 20-22, 1914. 1914. 34 p. 8°. (Senate doc. no. 605.)

Compensation for Accidents to Employees of the U. S., 1908–1913. Report of operations under the Act of May 30, 1908. (Bulletin 155. U. S. Bur. of Labor Statistics). Prepared under the direction of Royal Meeker, commissioner of labor statistics. 1914. 331 p. 8°. House doc. 1135. *House of Representatives.*

Government by Judges. Address delivered at Cooper Union, in New York City on Jan. 27, 1914, by Hon. Walter Clark, chief justice of the supreme court of North Carolina. 1914. 19 p. 8°. Senate doc. 610. *U. S. Senate.*

Government Ownership and Operation of Merchant Vessels in the Foreign Trade of the United States. Committee on the Merchant Marine and Fisheries. Minority views (to accompany H. R. 18666). 1914. 15 p. 8°. (House Rept., 1149, pt. 2.) *House Committee on Merchant Marine and Fisheries.*

Jewish Immigrants. Report of a special committee of the National Jewish Immigration Council appointed to examine into the question of illiteracy among

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Jewish immigrants and its causes. 1914. 26 p. 8°. Senate doc. no. 611. *U. S. Senate.*

Judge Emory Speer, Investigation of the Behavior of. Report . . . . Committee on the Judiciary (to accompany H. Res. 234). 1914. 226 p. 8°. (House Rept. no. 1176). *House Committee on the Judiciary.*

Judicial Recall. Address delivered at St. Louis, Mo., on September 23, 1914, before the State Bar Association of Missouri . . . . by Rome G. Brown, chairman of the American Bar Association Committee to Oppose Judicial Recall. 1914. 21 p. 8°. Senate Doc. no. 617. *U. S. Senate.*

Labor Decisions of Courts and Opinions Affecting, 1913. 1914. 304 p. 8°. Bureau of Labor Statistics. Bulletin, whole no. 152. (Labor Laws of the U. S. Series. no. 4). *U. S. Bureau of Labor Statistics.*

Labor Laws and Factory Inspection in Certain European Countries, Administration of. Bureau of Labor Statistics, Bulletin no. 142. (Foreign labor series no. 1.) 1914. 310 p. 8°. *U. S. Dept. of Labor, Bureau of Labor Statistics.*

Merchant Marine, American. An article prepared by the Southern Commercial Congress on the proposed establishment of a merchant marine. 1914. 6 p. 8°. Sen. doc. 601. *Senate.*

Neutrality and Trade in Contraband. Circular . . . relative to the obligations of the U. S. as a neutral nation to trade in contraband and as to the powers of the executive government over persons who engage in it. 1914. 4 p. 8°. (Senate doc. no. 604.) *Department of State.*

New York, New Haven & Hartford Railroad Co. Evidence taken before the Interstate Commerce Commission relative to the financial transactions . . . together with the report of the Commission thereon. In two volumes. 2413 p. (continuous paging.) Senate doc. no. 543. *U. S. Senate. Committee on Interstate Commerce.*

Note: Vol. 1. Hearings with index. Vol. 2. Exhibits with index.

Parcel Post Statistics. Compiled under the direction of Albert S. Burleson, Postmaster-general. 1914. 52 p. 4°. *U. S. Post Office Department.*

Precedents. Decisions on points of order with phraseology in the United States Senate from the first to sixty-second Congress inclusive, 1789–1913. Compiled by Henry H. Gilfry, chief clerk of the United States Senate. 1914. 711 p. 8°. Sen. doc. no. 1123. *Senate. Chief Clerk.*

Recent Antitrust and Labor Injunction Legislation. Annual address delivered before the American Bar Association at the annual meeting held on Oct. 20, 1914, at Washington, D. C., by Hon. William Howard Taft, President American Bar Association. 1914. 20 p. 8°. Senate doc. 614. *U. S. Senate.*

Statistical Record of the Progress of the United States, 1800–1914, and monetary, commercial, and financial statistics of principal countries (from statistical abstract of the U. S.). 1914. 706 p. 8°. *Dept. of Commerce Bur. of Foreign and Domestic Commerce.*

Summary of State Laws Relating to the Dependent Classes, 1913. 1914. 346 p. 8°. *Dept. of Commerce. Bureau of the Census.*

Taxation and Revenue Systems of State and Local Governments. A digest of constitutional and statutory provisions relating to taxation in the different States in 1912. 1914. 275 p. fol. *Dept. of Commerce, Bureau of the Census.*

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Taxation of Corporations. Part V. Mountain and Pacific States. Report of the Commissioner of Corporations on the system of taxing manufacturing, mercantile, transportation, and transmission corporations in the States of Montana, Idaho, Wyoming, Colorado, Utah, Nevada, Arizona, New Mexico, Washington, Oregon, and California. 1914. 236 p. 8°. *Dept. of Commerce, Bur. of Corporations.*

The Constitution of Canada. Address before the American Bar Association at the annual meeting held on Oct. 21, 1914, at Washington, D. C., by Sir Charles Fitspatrick, chief justice of the Dominion of Canada. 1914. 15 p. 8°. Sen. doc. no. 620. *U. S. Senate.*

War Revenue Bill. Report (to accompany H. R. 18891). 1914. 10 p. 8°. Senate Report no. 813. *Senate. Committee on Finance.*

ARIZONA

Initiative and Referendum Publicity Pamphlet. . . 1914. 116 p. 8°. *Secretary of State.*

Containing measures to be submitted to the electors of Arizona, November 3, 1914.

CALIFORNIA

Amendments to the Constitution and Proposed Statutes with arguments respecting the same, to be submitted to the electors of the State of California at the general election on Tuesday, Nov. 3, 1914. 1914. 112 p. 8°. *Secretary of State.*

California Laws of Interest to Women and Children. . . 1914. 62 p. 16°. *State Library.*

Eight Hour Law, Opinion . . . Relating to. 1914. 50 p. 4°. *Attorney-General.*

CONNECTICUT

Constitution of the State of Connecticut, as amended and in force Jan. 1, 1914. 1914. 27 p. 12°. *Secretary of State.*

Register and Manual, 1914 . . . 1914. 657 p. 8°. *Secretary of State.*

ILLINOIS

Blue Book of the State of Illinois, 1913-14. 1914. 672 p. 8°. *Secretary of State.*

Commission on Half-Century Anniversary of Negro Freedom. *Chicago.* First annual report, 1913–14. 1914. 43 p. 8°. *Ill. Comm. on Half-Century of Negro Freedom.*

T. W. Swann, secretary.

KANSAS

Discussions before the National Journalism Conference. Univ. of Kansas. News Bulletin. V. 14, no. 19, 21; V. 15, no. 2. 3 nos. 8°. *Univ. of Kansas.*

Discussions pertain to the following questions: ought newspapers to be dealt with as public utilities? Is not advertising today destroying the thrift of the nation? Why should not the newspaper be compelled by law to guarantee the public against fraudulent advertising? Why do not the newspapers require a state inspection and guaranty of circulation similar to that providing honest weights and measures? Is the defense of the newspaper that it must give the public what it wants, a good one? To what extent is the newspaper responsible for the public's low taste in newspapers?

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MICHIGAN

Helpful Books on the Crisis in Europe. State Library Quarterly Bulletin. V. 5, no. 3. p. 36–41. *State Library.*

OHIO

The Election Laws of the State of Ohio and of the United States of America applicable to the conduct of elections and duties of officers in connection therewith, compiled by Chas. H. Graves. 1914. 315 p. 8°. *Secretary of State.*

OREGON

Proposed Constitutional Amendments and Measures with arguments respecting the same to be submitted to the electors of the State of Oregon at the general election Tuesday, Nov. 3, 1914. 1914. 110 p. 8°. *Secretary of State.*

Statements and Arguments of Political Parties who have nominated candidates, and independent candidates who have filed statements with the secretary of state to be voted for at the regular biennial general election, Nov. 3, 1914. 1914. 40 p. 8°. *Secretary of State.*

PENNSYLVANIA

Smull's Legislative Handbook and Manual of the State of Pennsylvania, 1914. 1914. 1171 p. 8°. *Senate Librarian; Secretary of the Senate.*

UTAH

Utah's Minimum Wage Law for Females. 1914. 16 p. 16°. *Bureau of Immigration, Labor and Statistics.*

Paper read by H. T. Haines before the national convention of the Association of Governmental Labor Officials of the U. S. and Canada, at Nashville, Tenn., on June 9, 1914.
Law in question became effective May 13, 1913.

WASHINGTON

Taxation in Washington. Papers and discussions of the state tax conference at the University of Washington, May 27–29, 1914. 1914. 302 p. 8°. University of Washington. Bulletin, general series no. 84. (Univ. Extension series, no. 12.) *University of Washington.*

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